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Official Report of Debates (Hansard)

Thursday 12 September 1996

Journal des débats (Hansard)

Jeudi 12 septembre 1996

**Standing committee on
resources development**

**Comité permanent du
développement des ressources**

**Employment Standards
Improvement Act, 1996**

**Loi de 1996 sur l'amélioration
des normes d'emploi**



Chair: Steve Gilchrist
Clerk: Douglas Arnott

Président : Steve Gilchrist
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENT

Thursday 12 September 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Jeudi 12 septembre 1996

*The committee met at 0904 in committee room 1.*EMPLOYMENT STANDARDS
IMPROVEMENT ACT, 1996LOI DE 1996 SUR L'AMÉLIORATION
DES NORMES D'EMPLOI

Consideration of Bill 49, An Act to improve the Employment Standards Act / Projet de loi 49, Loi visant à améliorer la Loi sur les normes d'emploi.

CANADIAN ADVANCED TECHNOLOGY
ASSOCIATION

The Chair (Mr Steve Gilchrist): I'll call the meeting to order. Good morning, all, on this our final day of hearings on Bill 49, An Act to improve the Employment Standards Act.

We'll start right away with our first presentation of the morning, from the Canadian Advanced Technology Association. Good morning, gentlemen. Just a reminder we have 15 minutes for you to use as you see fit, divided between either presentation time or question-and-answer period. With that, the floor is yours.

Mr Norm Kirkpatrick: Thank you very much. My name is Norm Kirkpatrick. I'm executive director for the Canadian Advanced Technology Association. I should mention that the handout that is in front of you there is essentially for reading afterwards. It just has some literature on the trade association and some information on Cybermation, which is here with me today. We did not prepare a written brief on it. We preferred instead to have the dialogue today, so I'll begin that now.

We are very appreciative of the opportunity to speak to the committee and we wanted to say that, on behalf of CATA, we do support the improvements to the Employment Standards Act in Bill 49. We believe it's a very positive step.

In order to share our perspective today, I wanted to spend a few minutes just explaining who we are. The Canadian Advanced Technology Association is headquartered in Ottawa, and we have offices across the country as well as an office in Markham here in the Toronto area. We are a national trade association, and what is somewhat unique, we are multi-sector. So CATA is not simply information technology; we are a trade association that also includes aerospace companies, medical devices, biotech instrumentation. It's a very wide band of advanced technology organizations that come together and share their interests in promoting the development of research and development in Canada, of innovative Canadian-based products and R&D in promoting their exports for the country.

CATA represents approximately 65% of the advanced technology community, and certainly the bulk, or a large portion, of our members are based in Ontario. Some of the companies you would know that are members and on our board are Corel, Calian Technology, Newbridge Networks, Fulcrum, JetForm, as well as established companies like IBM, Northern Telecom and Apple. So it's a fairly broad range.

Our mission is to act as a catalyst to stimulate enterprise growth among our members and throughout the industry. We do that through a variety of ways with services to help them be more competitive, with different kinds of events, strategic alliances, working on the Software Human Resource Council, sponsoring Connect.IT, and what we try to do is to bring the investors together with the entrepreneurs and the companies and help them forge the necessary resources and alliances to compete internationally. So we want to attract investment.

One of the interesting things is that the common thread throughout it all today is becoming software. To give you an example, Allied Signal Aerospace, a \$165-million operation here in Toronto, creates the air quality control systems for all the big planes that you and I fly on. That is primarily a software product now. So you have a lot of software engineers, and it seems no matter what member we go into, in what part or what niche, software is the common thread. So knowledge workers are playing a very large role.

At this stage, to provide a perspective — and I hope to also have some time for questions — I've asked Mike Cannata of Cybermation Inc to come and talk to you a bit about his business and how he sees the changes that lead to our belief that we should have improvements to the act. So I'll turn it over to Mike at this point.

Mr Mike Cannata: Thanks, Norm. Obviously we're a CATA member and we share the perspective of CATA. I'll just tell you a little bit about our business and then I'll tell you a little bit about what some of our challenges are to keep in touch with.

We provide software for large data centres. It's very mission-critical software that helps data centres run efficiently. Probably about 85% to 90% of our business is outside of this country. We are headquartered in Markham and we are one of those fast-growing software companies that is employing a number of people year after year after year. We grew our revenues this year 80%; the year before that it was 60%. Last year we had 30 employees; this year we have 50 employees; next year we'll have 75 employees. We're looking at gross to be probably from \$9 million to \$14 million or \$15 million next year. We're earning about 30% pre-tax, so we're

paying a good amount of taxes into the Ontario government as well.

When I say we're mission-critical software for large data centres, for a company our size our customers are quite recognizable. We manage the data centres. Our software helps manage the data centres for people like American Airlines, Cathay Pacific, every government location — the Hong Kong government data centre, the Singapore government data centre, the data centres in California — some of the large insurance companies such as Allstate Insurance — every one of their data centres in the United States — people like JC Penney — very recognizable names of customers.

Our primary product is our people. Software is what's in people's heads and supporting that is what's in people's heads. We've got a very talented and very educated workforce, and one that we spend a significant amount of time in educating and training. I think last year we averaged about 15 or 16 days of classroom training for our employees. I looked at a recent survey, and I think in Canada the average of companies is about two days. So it's the type of thing you spend a lot of money on.

0910

We feel that we treat our employees quite exceptionally. To give you an idea, the people who support this mission-critical software — you can imagine that data centres, if they're relying on a piece of software to make them run efficiently and they're running 24 hours a day, seven days a week, they expect the kind of support you need to run those data centres, the type of people who can answer very high-skilled, technical questions almost immediately on the phone. So the type of people we have in both development and technical support are the kind of people to whom we end up paying salaries in the \$50,000- to \$80,000-a-year range. We have programs that ensure that every one of our employees participates in a bonus program. We have group RRSPs that are based on profit sharing, so this last year every individual in our company got a \$2,000 contribution to their group RRSP, as an example. Every one of our employees is a shareholder in the company. These are the kinds of compensation programs we put together for the type of people we have.

When I talk about flexibility, some of the things that are important for us to have and some of the challenges that we have, given that most of our business is outside this country, we've got things such as people who absolutely have to work on Canadian and Ontario statutory holidays, because in the US they're not and people expect the people to be around. We need to have people at the end of phones who are able to answer technical questions well into the night. Right now, after a period of time — I think it's 8 o'clock at night — we're putting people on pagers, but as the company grows, we're going to have to go to seven-day-a-week, 24-hour-a-day, round-the-clock support for data centres around the world.

Some of the challenges we're looking at right now, what makes more sense for us, is looking at doing it here or do we open up a support centre in a place like Australia, where we can switch the phones over at 8 o'clock at night so that we get the same kind of support 24 hours a

day, seven days a week. So the kind of issue that we wrestle with is making sure that whatever legislation is in place, it's flexible enough for skilled knowledge workers and not hampering.

That's just my little bit of background. Certainly, we're open to any questions you may have.

Mr Kirkpatrick: I'd like to open it up for any questions now that you may have, if we have one or two minutes.

The Chair: We certainly do. In fact, there's about two minutes per caucus. Of course, we'll start with the official opposition.

Mr Jean-Marc Lalonde (Prescott and Russell): Thank you, gentlemen. You said that your association supports the amendments or the changes brought in to the ESA. Are your people, your employees, all unionized?

Mr Kirkpatrick: The majority of the members are non-union within CATA. We have a large proportion of organizations that are the small, fast-growing, high-tech companies which are started up by two, three, five, 10 employees and grow like that. So in the majority of cases, they are not.

Mr Lalonde: The ones that are part of a union, are they aware of all the changes that were brought in by the government?

Mr Kirkpatrick: I would hate to say that is the case. I'm not certain if it is. We haven't polled it. We do different fax polls on different things. What we did was talk to a wide number of the members on a lot of different issues, and part of it too was looking at change. In general what's coming back to us is that the organizations that are members of CATA have such dramatically different organizational structures, they're so fluid and the job rules are changing all the time, they're actually creating positions to support the products. As a result, I guess what we're saying is that the legislation and regulation — we believe it is necessary to have it, but we believe it needs re-engineering, just as we're constantly re-engineering these companies, if that makes sense to you at all.

Mr Lalonde: I know there is great competition in that field, but I believe that the fringe benefits are pretty good in your group. Still I wonder if the employees who belong to unions are fully aware of all the changes that were brought in, because I haven't seen one union rep come in front of us saying they are in favour of the changes brought into the ESA.

Mr David Christopherson (Hamilton Centre): Thank you for your presentation. It was very interesting. A lot of areas you raise are not covered by ESA and there is some work to be done to make it better. I want to ask you one question with two parts to it. First, are you aware, in giving your support to Bill 49, that you will be denying people who probably have very little to do with your companies — minimum wage workers, low skills, many of them new Canadians — the right to claim for money they are owed from bad bosses, and in amounts that you might think relatively small — \$50, \$75, \$100 — as a result of these changes? Are you aware that they will be denied their rights to access that kind of money through the ministry, which is a right they now have? Second, in the broader review of the Employment

Standards Act, would you be in favour of legislation that would protect workers who are on contract and who are part-time and temporary who right now have very little protection in the law?

Mr Kirkpatrick: I'll answer the second part first. The attitude among our members whom we've talked with is that they want to be strong corporate citizens. They want to be fair with their employees. In fact, they are the most valuable asset and becoming a larger and larger portion of these organizations. Whether he makes a hardware product, you know, it's still in software where the competitive advantage is. I think we're finding that they would be very supportive of that.

With regard to the first point you made, I would have to say that probably not all the members are aware of that detail. Our understanding is that there will be a phase 2 to this that will get into a lot more detail, and we expect that some of these things probably would be revisited under that.

Mr Christopherson: Just so you know, there is no indication of that from the government at this point.

Mr Kirkpatrick: At this stage the feeling we've got is, we live in such a dynamic environment, with competitive change happening so rapidly, that if you don't adjust quickly and make changes in your organization and react, then you may turn around and find your market is gone and some offshore competitor has taken the market. From that point of view we're saying that with the massive change that has gone on and the dynamic restructuring in the economy, surely, without even getting into detail and trying to justify this, there has to be re-engineering done within the employment laws.

The other thing is that CATA is actively involved. We want to attract investment into the country, and it's not only an issue of ensuring that Cybermation, as it grows, tries to keep those jobs here. We want those jobs here. We want that research and development here. We've got to solve those problems. Some of that is going to take a flexible structure and there are going to be mistakes made, and we have to try to make as few as possible as we go there.

Mr John R. Baird (Nepean): Thank you very much for your presentation today. Many firms you represent are located in and around my constituency. Our community, which has been hit very hard by the federal government's decision to lay off 45,000 public servants, would be in really rough shape if it weren't for the high-tech sector. It's been leading the economic growth. In the last year there have been about 30,000 net new jobs created in the region and it's all been led by the high-tech sector.

Some of these companies have permanent signs bolted in their lobbies welcoming new employees because there are just so many. I was out in Newbridge last month and they were welcoming 25 people a week, every week, into the company. That's absolutely extraordinary. I noticed the unemployment rate in Ottawa-Carleton, which was deemed to be one of the worst areas about two or three years ago, is down to 7.7%, so there's still a long way to go.

You mentioned flexibility, which I think is interesting. I think this points to the need for a comprehensive review of phase 2 of the Employment Standards Act because this

act wasn't written with the high-tech sector in mind. When this act was written in 1974 we didn't have people dealing with companies around the world on an instant-by-instant, moment-by-moment basis.

You mentioned switching a system over to Australia. With great respect to Australians, we don't want you to switch the phones over to Australia. We would prefer more jobs here in the Ontario, particularly when you look at the contracts that some of these high-tech companies have entered into, with Telecom switching systems in China and the Far East; it's just a really exciting part of the Ontario economy. I guess your industry will have to be a big part of the consultations with respect to phase 2, because we have to look at the new economy when we're establishing phase 2, take a comprehensive view of the Employment Standards Act, because the act simply wasn't written to take your industry, on a global basis, into account.

0920

Mr Kirkpatrick: I totally agree with what you're saying and support that. In fact, another challenge we have that's tied into this as well is ensuring that we have the job opportunities and work environment to keep the young people we're graduating here, because we've got a lot of jobs we can't even fill within the high-tech industry, and we're competing with the high-tech companies south of the border. All you have to do is look in the Globe and Mail at the ads to see who is coming up and recruiting. These people are being attracted to go down and work for Microsoft and some other companies, being taken straight out of university. We need those people here as well. We need that creativity. We need the Cybermations to grow. We're really welcoming and receptive and wish to participate in phase 2 as you work through this.

Mr Baird: These are the type of jobs — at Newbridge the average salary is \$60,000 and the average age is 32 — we dream about.

Mr Kirkpatrick: That's right.

The Chair: Thank you both for taking the time to come and make a presentation before us here. We appreciate it.

SERVICE EMPLOYEES INTERNATIONAL UNION OF CANADA

The Chair: That leads us to the Service Employees International Union regional office. Good morning. Welcome to the committee.

Mr Robert Buchanan: Good morning. I assume you all have a copy of our brief. Because of the time lines we've been restricted to, I would prefer, if you don't mind, just summarizing our brief and picking up on the most salient points and concerns the service employees have with Bill 49. My name is Robert Buchanan. I am the research coordinator with SEIU in Canada. With me is Karen Cobb, a research analyst with the Service Employees International Union.

We welcome the opportunity to present our views to you today on this most important piece of legislation. SEIU, for those who are not aware of our union, has a very long tradition of organizing and representing workers in very low-income and vulnerable workplaces.

Our history started off with organizing building and service employees: janitors, cleaners, and at the time, elevator operators. We have moved into long-term-care facilities, hospital workers, foodservice workers, home workers and still maintain our tradition with janitors and cleaners.

Let me start off by saying that SEIU is appalled at what this government is doing to the working people in this province, both union and non-union, through pieces of legislation such as Bill 7, Bill 26, which gutted the Pay Equity Act, and now Bill 49. Our understanding was that Bill 49 would have allowed the overriding, in collective agreements, of minimum working conditions such as severance pay, overtime, public holidays, hours of work, vacation pay and wages. While we understand that the minister has reconsidered, at least for the time being, on this most important issue, we believe it needs to be addressed. Furthermore, later on in my discussion I will provide you with an example of how ill-conceived this bill really is.

You should know that 80% of our membership does not have the right to strike, that 80% is governed under the Hospital Labour Disputes Arbitration Act. That means that if employers and unions don't resolve a collective agreement through the negotiation process, contract resolution is conducted by a board of arbitration or an arbitrator. What Bill 49 would do, in our opinion, is provide arbitrators with the power to award substandard provisions within our collective agreement, considering that we would not have the right to strike on such provisions.

What is even more important is when you consider the impact that arbitrators are restrained under with bills such as Bill 26. I remind you of schedule Q which, among other things, requires an arbitrator to look at the ability to pay. Therefore we ask you, will an arbitrator consider awarding certain substandard provisions at the expense of improving the working conditions of people who are governed under the Hospital Labour Disputes Arbitration Act?

We also see Bill 49 as a move to privatize the enforcement mechanisms of working standards within this province. What is this going to do? It's going to increase costs not just for the unions but also for the employers, because now unionized employees are going to be required to fight those substandard actions by the employer through their collective agreements.

I ask you to consider this: Does a rights arbitrator have the preview that employment standards officers have? We suggest to you that under the Ontario Labour Relations Act they don't. In fact, one of the most significant things about the Employment Standards Act is the investigation tools which the officers have. Rights arbitrators historically don't have those tools.

One other issue that raises tremendous concern to us is the time lines within filing a complaint under Bill 49. We believe they are very ambiguous, i.e.: Is bringing time lines down from two years to six months just for non-union or is that for unionized employees? Or will unionized employees have to have provisions in their collective agreements which speak to time lines in which to file a complaint?

Speaking of non-union employees, we believe that the minimums and maximums set by Bill 49 are unjust and don't stop and will not stop the abuse of employers. We will provide you right now with an example of such abuse.

In a nursing home in Leamington, in southwestern Ontario, there is a group of women — I stress that there are only women working there — low-paid, \$12 an hour, who have decided to join SEIU as a union. Historically these people were required to be at work 15 minutes before and 15 minutes after the shifts. They were not paid for these 15 minutes. The union has filed a complaint under sections 17 and 21 of the Employment Standards Act. We have calculated that certain people within this nursing home are going to be owed a total of over \$150,000.

I ask you to consider this legislation and the options. If these people had decided not to join the union, and there are people working within the home who will not be unionized, they would have been capped under Bill 49 at \$10,000 apiece. Some of them, I remind you, who are only making \$11 or \$12 an hour, are owed over \$22,000.

Bill 49 suggests that if they don't want to have the cap and want to fight this in the courts, that is an option. I suggest to you that someone who earns \$12 an hour, merely \$22,000 a year, does not have the financial capability to fight this in civil courts. That's an unrealistic suggestion to impose on these people.

However, these people did decide to join a union and it was our union. Because of certification under Bill 49, they have lost their rights under the Employment Standards Act. In fact, now they must fight this violation under their collective agreement. I remind you that nursing home workers are covered under the Hospital Labour Disputes Arbitration Act; they don't have a collective agreement, and they will not have a collective agreement until they negotiate one or seek one through a board of arbitration, which means incredible time delays that these people are subject to.

0930

In addition to that, the previous problem that I raised to you before about arbitrators: Will an arbitrator, under first contract arbitration, under HLDAA, consider the magnitude of the employment standards and hence provide these people with lower working conditions than they rightly deserve?

The problem has even more magnitude under first contracts when you consider the right-to-strike sector. A great example would be the cleaners who work at Queen's Park, represented by SEIU Local 204. If in fact those cleaners were fighting for a first contract, which they are, and there were violations of the Employment Standards Act, which there may be, and with your Bill 7, where is the leverage that the employees have to require an employer to, first, stop the violations of the Employment Standards Act and, second, most importantly, to get a collective agreement which they can work under?

That concludes my comments. Finally, I would strongly urge this government to stop its attack on working people by repealing all of the anti-worker legislation that you have imposed on this province, including that found in Bill 49. Thank you for this opportunity.

The Chair: Thank you. That allows us just over a minute and a half per caucus, commencing with the third party.

Mr Christopherson: Thank you very much for your presentation, and thanks for the example. I think it's important that the government members, with whatever limited influence they may have in caucus, have the ability to truly understand the depth of the damage that Bill 49 will do to both union and non-union workers, and I can only hope that they've been listening carefully and will go back and talk to their political masters.

I want to just run by you, because I don't have an awful lot of time to get into details of things, the fact that the government and, mostly, chambers of commerce — some other corporate associations but mostly the chambers of commerce — have come in and are quite frankly surprised, they claim, that unions aren't more supportive of this flexibility opportunity that's being afforded them, not so much under Bill 49 now but certainly in the broader review.

As succinctly as possible, can you give further reasons why you're not interested in having any contract contain standards that are below the Employment Standards Act?

Mr Buchanan: "Flexibility" is a very relative word, and I would suggest to you that flexibility is only possible when the people who are sitting at the bargaining table have a relationship which is balanced. Right now, with the pieces of legislation that have already been passed by this government, the bargaining table is not balanced; it's tipped in favour of the employer. Until the balance is restored, then flexibility is not flexibility; it turns into abuse.

Mr Christopherson: That's crucial, because they really believe that unions walk in, lay down on the table what they want and because it's big unions and big labour they can just demand anything and therefore no union would ever accept a collective agreement that has anything that's bad for their members. Clearly, they don't understand the bargaining relationship.

Mr Buchanan: I'd be delighted to take any member from caucus or the majority into a negotiation session with me at any time. I'm sure they'd see that it's a lot different.

Mr Christopherson: Excellent presentation. Thank you.

Mr John O'Toole (Durham East): I had 10 or 15 years in the labour relations field with a large unionized company and did see the influence and ability of the unions and have a lot of respect for that. More specifically on the example you used, I believe the six months and the other limitation aspects of this bill, the very importance of — I'd like you to explain somebody making \$25,000 a year, that's what you said —

Mr Buchanan: Yes, \$22,000.

Mr O'Toole: Most standard work weeks are based on 40 hours; times 52 weeks, that's 2,080 hours times 12. Figure it out. A lot of public people don't work 40 hours, which isn't in the act, and much of your union group doesn't.

I'm not opposed to unions at all, but the point is this: Why let the abuse go on? I challenge you that these

people that are owed \$30,000, that's the travesty of the current system, that it's allowed to go on, the accumulation of employees being violated by — if there are, and I'm sure there are — bad bosses. What we tried to do is to bring it to the surface more quickly so less people are abused, and repeat offenders, those perpetrating companies, should be taken to task and held accountable. That's where the collections comes into it. If I'm a collector, my only function is to collect the money, and I don't get paid until I get it, on behalf of the employee.

I want you for a moment to take off your ideological hat and think that these things can be improvements. If you can make an argument that they aren't, then you're saying the current system works, and you just told me you've got people who are owed \$30,000. That tells me the system doesn't work.

Mr Buchanan: No, sir, I didn't suggest to you that the current system works; I suggested to you that your system will not work. I suggest to you that our current system can work, and I suggest to you that you should improve what we already have instead of eroding what we had worked very hard to fight for.

Mr Lalonde: Thank you for your presentation. I do have major concerns too with the \$10,000 cap and also with the six-month limit to file their complaint. I'd just like to know, what was the reason for asking the employees to work 15 minutes before time and also 15 minutes after time? In my past experience with one of the nursing homes, the union had gone in; the fact that they had to reduce the number of beds to meet the government requirements of the building, the union refused the reduction in staff. They said, "To be able to make both ends meet, we will have to reduce the staff." So they've gone ahead, they say, "Well, no, we will work half an hour more every day to compensate for the additional staff that you would have to hire or to reduce." I'd just like to know, in this case, what was the regular working-hour shift on this one?

Mr Buchanan: Seven and a half hours are the regular working-hour shifts.

Mr Lalonde: So they end up working 48 hours a week, then.

Mr Buchanan: Let me just say to you, sir, that this isn't the only place where this government has removed minimum standards. They've also removed minimum standards in long-term care. They've removed the requirement of the number of nursing hours per bed per resident. In fact, now you have nurses who are working twice as hard as they were ever working before and more patients in severe care than there ever were before. But that aside, most of the people within this workplace were working seven and a half hours a day.

Mr Lalonde: When they start doing, let's say, half an hour more a day, did they get paid for that additional half-hour a day?

Mr Buchanan: They will now, because they've joined a union.

The Chair: Thank you both for taking the time to appear before us and make a presentation.

I don't see anyone, but I'll make a call none the less for Durham Region Coalition for Social Justice.

IAN SELLORS

The Chair: Seeing no response, I see our subsequent presenter, Mr Sellors, has already arrived. Mr Sellors, I wonder if we can invite you to come forward. Good morning. Welcome to the committee. Just a reminder, we have 15 minutes for you to divide as you see fit into either presentation time or a question-and-answer period.

Mr Ian Sellors: Mr Chairman and members of the standing committee on resources development, my name is Ian Sellors. I am pleased to appear before each of you today as an employer and a taxpayer in Ontario. It is my personal view that the objective of labour standards legislation is to provide a set of minimum standards to the employer community, both small and large, to use as a guide when developing their policies and procedures related to their employees. This definition also provides the employees with the minimum standards that their employers should adhere to.

As an employer and a principal in Total Credit Recovery, our human resource assets are critical to our success. They don't appear on our balance sheet, but in fact our employees' efforts and contributions are the single most important asset in our company.

0940

Currently, all related provincial jurisdictions have collection problems to one degree or another. Alberta, as an example, has developed the philosophy of abuser pays. They have successfully legislated provisions into their act that passes along the cost of collection of delinquent orders to the employers who do not comply with payment. This mechanism in itself fosters the speedy recovery of delinquent accounts on behalf of the victims, the employees, at little or no cost to them.

With respect to Bill 49, I will defer on the general debate of its overall merits to others who are more informed. I offer my personal support, however, and comments on Bill 49 and, more specifically, the subsection which deals with the collection of unpaid accounts, the costs associated with collection and the distribution of moneys collected and the definition and powers of the collector.

The associated provisions contained in section 73, relating to the collection of fees and disbursements, will have a positive impact on the recovery process at no incremental cost to the Ontario government. This initiative can be aptly termed socially responsible and has the capability to return increased recoveries directly to the victims, the wronged employees.

Additionally, this enlightened process will send a strong signal to the business community that the government is serious about enforcing orders. In fact, I would speculate that the abuse of employees by unscrupulous employers will be reduced simply because of increased enforcement of outstanding orders.

The abuse associated with non-compliance of orders remains a major challenge, and the remedy to neutralize non-payment and provide an additional tool for enforcement is available to each of you to support. Regardless of your political persuasion, the fact of the matter is that your support of the relevant sections associated with the collection of delinquent accounts will be viewed as a positive contribution by your constituents.

Consider the benefits: The personnel of the Ministry of Labour will be able to focus on its core business by contracting out unpaid orders under the employee wage protection program. The Ministry of Labour's resources will be able to be redeployed for more efficient and effective use. Increased collection activity by the private sector will reduce non-compliance with the Employment Standards Act. Lastly, the employee victims will be the beneficiary of increased recovery at a faster rate.

At Total Credit Recovery, we have had the privilege of dealing with all three levels of government over the past six years. Our experience leaves no doubt in my mind that a well-managed collection process will be beneficial to all concerned. In closing, ladies and gentlemen, I solicit your support on the appropriate sections and encourage speedy passage and implementation.

The Chair: Thank you, Mr Sellors. That affords us two and a half minutes per caucus. The questioning this time will commence with the government benches.

Mr O'Toole: Thank you very much, Mr Sellors. I'm very supportive of your interpretation of the collections aspect; I believe you're in that business of collecting. I have just a couple of questions on that. You said you've had some experience with all three levels of government today. Could you briefly give me some idea of what that is.

Mr Sellors: Certainly. Thank you for your question. Perhaps I can provide you with a little bit of my personal background. I have been in the credit collection industry for over 25 years and specifically in the collection industry for slightly more than 20. During that period of time, I've had an opportunity to work with a variety of governments throughout North America: state and municipal, provincial, municipal and Canada, as well as for the last six years with the federal government.

There's no doubt in my mind that limited resources that are available to administrators, whether they be in the private sector or public sector, have a negative impact on the potential recovery of outstanding accounts. There's no doubt in my mind, further, that the involvement of a third-party collection company can have a positive effect on recovering moneys specifically owed to the victims associated with labour standards orders. The federal government has been utilizing the services of collection companies for a number of years, and very successfully. The provincial government of Ontario, as well as others, have been utilizing the services of collection companies.

I'm an advocate of abuser pays. I'm advocate of the Alberta legislation. I don't want to confuse abuser pays with user pays, but when you have a non-compliant company which is taking advantage of workers, I think we have a social responsibility to remedy that. The collection process, by including the private sector, will provide a solution to that problem.

Mr O'Toole: Thank you for that extended response. Just one comment. The fee for your service — I just want to be on record as saying that this should not be borne in any case by the employee who has earned some money. What's your view on that, him or her paying to have their own money collected?

Mr Sellors: Unfortunately, I don't know the statistics that are available today in terms of the success that the

Ministry of Labour has with recovery of orders, but I would venture to guess that it would probably be in the 25% to 30% band. In other words, 70% to 75% of the orders that are made are unpaid. There's a cost to service. I believe the legislation provides for the employer, the abuser, to pay the cost. I think in some cases there may be a practical remedy to pass along part of the costs to the employee, but it's the story that something is better than nothing, perhaps, that exists today.

Mr Lalonde: Thank you for your presentation. You touched mostly on the collection part in a good part of your brief. Don't you think the two years of investigation and also the two years to settle are way, way too long? Because most of the time, those employers are not paying the employees properly. If the employees have to lodge a complaint, it's because they are already in financial difficulty.

If we are to wait two and two to get the whole thing settled and all the money paid back to the employee, there's a great chance that this 75% of the people who are already not being paid will not be reduced because the effect — as I said, most of the time, the employees are in financial difficulties.

I think there should be a clause in there that we should add in the ESA that the commission or the cost of service should be added on to the amount owed to the employees and also it should be all reduced to one year, not any more than that. Also, when the employer sees that his credit record would be affected, he might do his best to try and settle the complaint that was lodged.

Mr Sellors: I agree with you. As a general rule of thumb, the longer it takes, the more difficult it is to collect. I would like to see the process speeded up. I'm not sure, in practical terms, about one year, six months, or what those time lines should be, but there's no sense ragging the puck. If there's an issue, it should be dealt with. The remedies are available, and the faster the collection process begins, the more successful it will be for the victim or the employee who was wronged.

0950

Mr Christopherson: Thank you for your presentation. We appreciate you coming forward today.

Is it fair to say that whether it's 75%, 25% or 100%, you need a viable company in existence to go after? In other words, if they've already gone into bankruptcy, there's not much you can do with them?

Mr Sellors: That's correct, sir.

Mr Christopherson: Just this week Mr Tascona, one of the Tory backbenchers who, as I understand it, used to be an employment standards officer himself, made the statement, and it's there in Hansard, that 50% of the money that's outstanding is because of bankruptcy. That would sort of put the lie to the argument the government has put forward that they can only collect 25 cents because it's inefficient and that if they go to private sector somehow you'll be able to change those numbers. The reality is, based on what you've just said, that if 50% of that money is outstanding because they're bankrupt, then not you or any other collection agency, unless some of your competitors are better than you, and I don't imagine you believe that — that money is gone, and you're not going to change that.

Mr Sellors: That's correct. You can't get money that isn't available. I think, going back to M. Lalonde's point vis-à-vis the timing issue, that could be very helpful. On the other hand, hopefully the economy will improve, but there's no miracles out there. You have to collect from a viable entity.

Mr Christopherson: I've listened long enough, and I thought it's time that we put this 25 cents in its proper perspective. The reality is, if Mr Tascona is right, and I would assume that he is, 50% means that you're not going to be able to put a major dent in those numbers.

Mr Sellors: Just one point, though, sir. If 50% of the outstanding bills or outstanding orders are the result of bankruptcies, perhaps the remedies are available through the time lines that are associated with getting involved earlier in the process. In fact, if that 50% is put aside and you can't collect on it, then what is occurring if 25% is in fact accurate? The success rate is only half of the available money. Let's improve on half of the available money.

Mr Christopherson: I would assume you consider yourself both an expert and a professional.

Mr Sellors: I have a broad range of experience and I try to operate my business in a professional fashion, yes.

Mr Christopherson: And I have no reason to doubt that or question that. I mean that quite sincerely. I only ask you that because I wanted to ask you: If you suddenly, tomorrow, in the blink of an eye, went from being the owner and operator of your own private corporation and suddenly became a public servant, your skills wouldn't be lowered or changed in any way? You'd still be an expert professional at what you do.

Mr Sellors: That would be my attributes, I guess. My personal attributes would be carried forward.

Mr Christopherson: My last question. It's fair to say, I think, that corporations exist to make money. I mean, that's the purpose of them; that's how our system works. Fair?

Mr Sellors: I have never found any difficulty with the word "profit."

Mr Christopherson: Right, and I don't either. That's the way the system works. I've asked this of other representatives from the collection agency world and they were, in my opinion, and it's there in Hansard, forthright enough to be completely honest in their opinion, and I have no reason to doubt that yours would be any different.

Is it fair to say that your company would make more money — and I'm not casting any aspersions on your motivation because I've made the claim that making profit is okay. But is it fair to say that the more files you close and clean up, the more money your corporation would make?

Mr Sellors: I believe there's a relationship between efficiency and profitability. Any company that is efficient and that has a market available to it should be profitable. Any company that is inefficient will likely leave some profit on the table and may even subject themselves to financial difficulties through mismanagement.

Mr Christopherson: The only problem we have in our party — that's why I've kind of gone through this process — with moving to the private collection agency

is that the *raison d'être* of going after the bad boss should be to get 100% of the money back, without any question. We just don't see how that can be translated into a private sector that also has, as a legitimate right, to build in a profit margin. So even if it's not an efficient case, for that employee who needs that 500 bucks, the government should move mountains to make that happen, whereas from a corporate efficiency, profit-making point of view, that may not be good business, and therefore the employee loses because the government has taken this out of their responsibility and handed it over to yours.

Mr Sellors: I have difficulty with that, sir, from the standpoint that it is the responsibility of any contractor to enter into an agreement with the client for a responsible work plan, a responsible objective and a responsible collection process. I truly believe the private sector can be helpful in the recovery of additional moneys at no incremental cost to the government, and that would allow the government to redeploy those resources that are on the payroll today to more meaningful tasks. Whether we can collect 100 cents on the dollar or 75 cents on the dollar, I think what we're going to bring to the table is the professionalism and the skill sets to be able to maximize what is available.

As an employer, the *quid pro quo* could be in play as well if we have an unhappy employee. So I think it sends a great signal to the business community: "Hey, do it right the first time." If we can reduce the number of orders or number of complaints coming to the labour standards people, that means it won't be as expensive to process. Maybe the time lines can be improved. Maybe through the improvement in time lines, the collections can be made faster.

Mr Christopherson: Thank you, and I thank the Chair for his indulgence.

The Chair: Thank you, and not to be unfair to Mr Sellors in allowing all the questioning to be extended, but I'd hoped that the next group would have shown up by now. Unfortunately, we've gone well over our time. But thank you, Mr Sellors, for taking the time to come and make a presentation before us here today.

Mr Sellors: I'm delighted, and good luck to the committee.

The Chair: I think we have no choice but to declare a 15-minute recess and trust that we have the next group show up by their appointed time at 1015. The committee stands recessed until 1015.

The committee recessed from 0958 to 1003.

COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA, ONTARIO REGION

The Chair: If I can call the meeting back to order a little ahead of schedule, fortunately our 10:15 presenters have arrived a bit early. We welcome the Communications, Energy and Paperworkers Union of Canada, Ontario region. Good morning and welcome to the committee.

Ms Denise Norman: Good morning. My name is Denise Norman. I am a national representative with the Communications, Energy and Paperworkers. My colleague is D'Arcy Martin. We're two full-time representa-

tives with our union and we're here today to voice our concern on the Bill 49 proposals.

We are a union that represents many industries across this province — the telecommunications industry, the media industry and many of the natural-resource-based industries. We have about 45,000 members in Ontario and we have ongoing dealings with major employers such as Bell Canada, Northern Telecom, GE, the Toronto Star, the Globe and Mail, the CBC and TVO. On the energy side, we deal with more of the oil-based industries here in Ontario, and with the paper industry.

Most of these major employers in this province fall under the provincial jurisdiction for safety and health laws, the Employment Standards Act, the Labour Relations Act and all those areas. We have had our differences in the past with these employers; there's no question. However, on a day-to-day basis we really haven't had a lot of problem having to refer to the Employment Standards Act with these employers.

Unfortunately, that hasn't always held true with all of the employers of members we represent. There are smaller workplaces and we feel some of these employers sometimes have little integrity, because it seems we're always having to take them to task, referring to our collective agreement and then end up having to go to employment standards. Really, that's the last kick at the cat we ever get to ensure that workers' rights are upheld and that they don't violate the basic rights we have in this province.

Our position on this issue right now is that the Employment Standards Act is already weighted in employers' favour. We don't have a level playing field right now, let alone with the proposed changes you're introducing.

We know you've had hearings across this province — you've been a busy committee — but we really want to remind you about the presentation that was made on August 19 by Gord Wilson of the Ontario Federation of Labour. Their position is very clear — and we agree with it — that the standards should not be eroded. They shouldn't be negotiating. We have to have basic standards and they shouldn't be difficult to get. Enforcement should not be contracted out or privatized, at any length. They spoke for us then and we're concurring again today with that position.

We all know that the minister withdrew section 3, subsection 4(2), of the draft, flexible standards, and we hope you continue with that path because we can't destroy what we have as a basis now. As far as we're concerned, if there are changes to be made, let's make them positive. We also need to know reasons why you're making these changes, what is at the end of the tunnel.

A lot of times, the labour movement has been accused of self-interest, of only looking after ourselves. That's true in a way — you can make that statement — but we don't apologize for that. We have work to do. We have a responsibility to our membership. We have in the past promoted employment equity. That's an issue that faces us today. Whether you like it or not, it's there. A lot of times our membership didn't even fall within that issue, but we promoted it. It's important to convince my brothers, my male counterparts in my union at my

workplace, that it's important that my wages are a reflection of what theirs are. We have to have equal basis on that part.

We don't agree with Bill 49 for the simple reason that we feel it's moving the cost back to the worker, back to the union. You're going to cap the amount of money they're going to obtain under the changes. We all know what time frames are like and how things can get delayed. The worker has no choice in the matter. They're going to be caught in the system. It's too rigid. To modernize for the sake of modernizing is one thing, but there have to be good, valid reasons.

A couple of issues we really want to bring to light have happened in the past. You may remember that back in December 1994 the Oshawa Times newspaper closed. Those were our members. There were 27 members there with more than five years of service, and they were owed severance under the existing act. Those claims are just recently settled. It took that long to get those things out of the way. A third of them, nine people, were over \$10,000. They were settled in their favour; they got what they were owed. Not to say what they had to go through, all of the finances and all of the personal tragedy they went through on that part, the existing stuff isn't perfect but at least they got what they were owed. Under your changes now, they won't get that. That's where we are today.

I want to turn it over to my colleague D'Arcy. He'll continue on and just say where he's coming from and what our position on that part of it is.

1010

Mr D'Arcy Martin: We move in page 3 of our brief to a couple of personal statements. I just want to say something personal as we go into it. My uncle was a Conservative MPP. It's depressing for a union rep to have to say that, but we always have difficulties in families. He was my namesake, and we've moved ahead.

Mr Jerry J. Ouellette (Oshawa): Smart uncle.

Mr Christopherson: They evolved.

Mr Martin: We evolved. Where are you?

A number of my family actually remain Conservatives, I'm discouraged to say, even in my own generation. What we're talking about is a community where we can live together, a community where we have some basic standards. As what I would have to call red Tories, my family have always been deeply involved in the community of Hamilton on a voluntary basis, with their own political convictions but with the sense that people have to live together and there have to be some common understandings that we work from.

That's what's demoralizing about this case, this situation we're looking at here. From the point of view of the people I represent — and heaven knows there are a lot of them in Hamilton, but as Denise pointed out, there are thousands of them across the province in different places — this pulls the floor out. It creates a climate of anxiety to which you can only respond by being confrontational, because you feel that your right to exist is threatened. That's what this whole climate promotes.

We've got a couple of cases. One I was personally involved in. This is a newly organized workplace up in Markham. I'm not giving the details here. I'm not

identifying this employer. I'm not out to score points in that regard, but here's the kind of thing that goes on: It was a non-unionized workplace. You have your basic standards, employment standards, about overtime for the week. Right? The way they would operate it is they would work the people Monday through Friday. On Friday they'd say, "Can you come in Saturday?" The person would come in Saturday and then, if you were a favourite of the supervisor, what would happen is you'd score your overtime and then work Monday through Friday the next week, and all is well, the standards are honoured.

If you aren't a favourite of the supervisor, what happens is that the following Tuesday you're notified not to come in Wednesday, your services won't be required Wednesday, and then they average out the hours through the two weeks, which is the biweekly pay period, and you wind up, having worked the Saturday expecting overtime, at the end of the two weeks you get a cheque for straight time. Are you following me on how that works? It's a nickel-and-dime sleazy little trick to play favourites with some people and to punish others. That's the kind of thing that exists under the existing legislation, and because you've got too weak an enforcement system these kinds of practices continue. If you stand up against it, you're in trouble. People don't stand up against it until eventually they get organized and form a collective voice, a union, and we move from there.

That kind of thing shouldn't require a union. That should be something which is a basic floor to which all workers are entitled, that they're not going to get jerked around for nickels and dimes. I think the system we have in place now creates punishment for the honourable employers and an incentive for the fly-by-night operators. When you eliminate the floors and start making things flexible, that's where we're headed. That's the case that's on the bottom of page 3.

As Denise has pointed out — we're in the middle of page 4 — this kind of nickel-and-dime, fly-by-night operation is covered up in the current climate by buzzwords like "globalization," "competitiveness," "right-sizing" and so on. We're dealing with organizations that are right-sizing — big ones. We're dealing with ones that are globally competitive. Northern Telecom is not the corner store. These are major operations. Some of them have unpleasant practices and we deal with those. Sometimes the union doesn't pull our own weight and we have to deal with that. But the people we're dealing with are globally competitive. They're right-sizing and they're not touching minimum standards. They're operating so far above the floor that these standards are not even an issue, and don't tell me that to be competitive you have to go below minimum standards. I can introduce you to all these companies that are listed on the first page of our brief that are globally competitive. Minimum standards are not about that; they're about giving permission for fly-by-night little operators to jerk people around for nickels and dimes.

Here's a situation on the bottom of page 4, another one. The person has been working 22 years. She is told at 5 pm on a Friday that the outfit is going to be shut. She hasn't got wages. She hasn't got severance. She's

having to fight this stuff through. There are loopholes we won't trouble you with, but she would be in a situation where all of the weight of that would fall back on her as an individual and on her union. The union is not equipped for that. The union was not set up for that. Our understanding was that there was a floor above which we were going to operate, and we could operate in that way. We're dealing with issues like racial harassment, sexual harassment. We're operating above the floor too, and you're trying to drag us back into having to deal with overtime, having to deal with vacation entitlements. When people lose their jobs and they're hurting and they're demoralized and they're financially losing the basis of their livelihood, they're at their weakest possible point. You're dumping it back on the union to do that work?

In conclusion, we feel that this great leap backwards is really inappropriate, unnecessary. It has nothing to do with productivity. It has nothing to do with globalization. It has nothing to do with competitiveness. In fact, we do deal with some organizations directly on an ongoing basis that are of this smaller character. We don't just deal with the big shops. We've got a courier service, in fact a couple. We're dealing now with telemarketing sweatshops, we're dealing with nursing homes, we're dealing with co-op housing, people who do maintenance, little operations with three or four employees.

In those places, this has nothing to do with globalization and competitiveness either. Nobody else is going to come in from Taiwan in order to provide the maintenance in the co-op. The courier service, by its nature, is a localized outfit; it does have a national and international chain. But what's happening here is that people are taking advantage of the rightward swing in the political climate to roll back gains and get back to the good old days when they could be in the saddle and they could run things. It's unacceptable.

We say on page 6 that we deal with different employers, small and large, profitable and unprofitable, forward-looking and Neanderthal, and you're building something for the Neanderthals. The unscrupulous are rewarded, the honourable are punished. Instead of dealing with real moving forward — we're not just trying to hang on to the history here. We're not here presenting from nostalgia. What we're saying is yes, let's move on. Let's move on to telework. Let's deal with these telemarketers. Let's deal with the franchising, self-employment, home offices, the real challenges of employment standards, instead of taking the pieces that are already working in the places that we now operate and rolling those back so that we have to argue about stuff that we resolved 30 or 40 years ago.

We cite as our final authority the eminent labour relations expert Lily Tomlin, who says that in the rat race, even the winners are just rats. The people of Ontario deserve a little better than that from the political leadership. That's our presentation, Mr Chair.

The Chair: Thank you. I didn't want to cut you off. We've just gone over the 15-minute mark, but thank you very much for taking the time to come and make a presentation before us today. We appreciate it.

DURHAM REGION COALITION FOR SOCIAL JUSTICE

The Chair: I'm informed that one of the earlier groups is now with us, the Durham Region Coalition for Social Justice. I invite them to come forward, please. Good morning. Welcome to the committee.

Ms Colleen Twomey: Good morning. Sorry we're late.

The Chair: The clerk is making copies of the presentation for the committee members. You'll have that briefly.

Ms Twomey: The Durham Region Coalition for Social Justice welcomes this opportunity to make submissions to the standing committee on resources development regarding Bill 49, amendments to the province's most fundamental workplace standards legislation.

The Durham Region Coalition for Social Justice is composed of individuals and representatives of community groups such as churches, social activists and labour union locals. We are also a non-partisan, non-profit organization. We have gender parity and equal representation from both community groups and individuals. We are affiliated with the Ontario Coalition for Social Justice, Action Canada Network and the Canada Health Coalition.

Our role is to promote issues of social justice and environmental improvement. We aim to counter those who would subvert democracy and compromise the quality of life all people have a right to expect. It is the position of the Durham Region Coalition for Social Justice that the employment standards legislation is among the most fundamental pieces of labour legislation for ordinary people in this province. The purpose of this legislation is to provide minimum workplace standards for all workers in Ontario, including minimum wage, the legal workweek, overtime, vacation pay, pregnancy leave and notice to protect workers from the exploitation handed out by the province's worst employers.

In fact, Bill 49 opens the door to a new world of opportunity for employers to cheat and steal from their employees. Furthermore, we submit that any amendments to this legislation must enshrine a basic principle of continued improvement in the employment standards of workers so that they may be protected from the excesses of the labour market.

1020

The truth is that Bill 49 is not just a few housekeeping changes but involves drastic changes in the enforcement of employment standards, limits on claims, the privatization of the collection of claims, new limits on claims and employment standards protection being stripped from collective agreements, although we will not be speaking to this last amendment.

The Durham Region Coalition for Social Justice represents employed as well as unemployed people. Although Bill 49 is particularly detrimental to the rights of the working people of this province, it is also harmful to society as a whole.

Limits on claims: Under Bill 49, there will be a \$10,000 cap on claims. However, no minimum has been announced. We have deep concerns over this amendment, as workers are often owed more than \$10,000, even in sectors known for low wages such as the garment indus-

try, domestic work and foodservices. The minimum will also insult and be harmful to low-wage earners. Recent cases include a garment worker owed over \$20,000 in wages, vacation pay and termination pay, and domestic workers owed over \$10,000 in unpaid overtime pay, termination, vacation pay and severance. In fact, workers must accept this limit on their claim if they want enforcement from the government.

Employers are given permission to make it a practice to keep their violation of the Employment Standards Act under the minimum amount in any six-month period. To collect a claim above \$10,000, a worker must launch a private lawsuit in civil court. The Ontario legal aid plan does not cover employment law, and very few legal aid clinics will accept these cases. Workers who can't afford lawyers simply won't have rights under the Employment Standards Act. Why should an employer who has stolen more than \$10,000 from an employee be let off the hook for paying it? Shouldn't they be penalized instead of rewarded?

The following is a real account of one of our members and her ordeal with an employer in commercial publishing:

"The book publisher I worked for at my last paid job was not the typical publisher with a low profit margin, but a very profitable commercial publisher with business connections with some of the high-profile CEOs who are busy putting people out of work through layoffs and corporate takeovers. I came to my job there with an extensive university education and courses in the book publishing business, and no one at our company had a written contract. As executive assistant to the publisher, I frequently worked many 60-hour weeks, although at the time of hiring, my hours were to be 35 per week. I was on a salary of \$25,000. I really had no job description and for 8.5 months I was a temp filling in for a person on maternity leave, until I was made permanent and had medical insurance and other benefits.

"The staff turnover was well over 100% by the time I was fired without notice, with two weeks' pay. Nervous breakdowns and high rates of absenteeism were common in my workplace. Reporting directly to the CEO and co-owner of the company, I was not permitted to attend an appointment which could only be secured during office hours with a mammalogist, even though this was for a scheduled mammogram following a breast tumour operation. I was fired when I asked for a promised job review and salary raise. Although I had performed as described, putting in many hours of overtime, and had never had any indication that my performance was inadequate, I was fired without notice when I asked for this review. At this time, I had also been given a letter from the office manager in support of a new mortgage on a first house.

"At the time, I suggested to my employer that alternately I would like to resign, and if firing was insisted on, I had a valid employment standards case. My employer laughed at this and under these conditions, I retained a lawyer. A year and a half later, I received an additional payment of four weeks' salary from my former employer in an out-of-court settlement. Today, I would not have access to legal aid to resolve this case. As it

was, six weeks' pay has not gone a long way to compensate for nearly two years of unemployment as this is my status at present."

Time limits on claims: Under Bill 49, workers are cut back on the amount of time they have to file a claim with the ministry from the current two years to six months, but still up to four years' wait for the ministry to investigate claims and collect money owing. The initial two-year filing period for recovering money owed to employees is an essential component of enforcing the current set of rights found in the act. Despite the act's prohibition against disciplining or discharging employees for launching standards problems, understand their vulnerability in filing a complaint while maintaining employment with their employer in these circumstances.

The current law allows for these employees to recover up to two years of wages while they worked for employers that were violating their rights. Thus, past violations of the law are not left unaddressed. Consequently, over 90% of employment standards complaints arise after workers have left their employment, and the average time for a claim to be considered by an employment standards officer is nine months.

These employees tolerate violations of the terms or conditions of their employment, and if not, they are terminated. Given the difficulty in finding employment in a depressed labour market, leaving employment is often difficult and can take long periods of time.

In contrast, the two-year period allowing the Ministry of Labour to initiate a proceeding and two more years to prosecute a claim to recover money owing to an employee is excessively long. This period considerably delays, and therefore denies, justice for workers forced to linger through the complaints process. However, an employer's time to appeal an employment standards officer's decision is increased from 15 to 45 days.

Ms Judy Mitchell: Under Bill 49, the Ministry of Labour will not enforce the act in situations where it deems the violations may be resolved by other means. Bill 49 forces workers who file claims to decide to use either the Ministry of Labour claims process or go to court. They will have to make this decision at the start, often without knowing which option would be better for them.

Will Ministry of Labour staff explain all the implications of this decision in the first language of the worker? How many lawyers are willing to explain those implications for free? Will most people find this intimidating and confusing? Their decision cannot be changed. They cannot get legal aid for taking employment law cases to court.

Since employers cannot be made to pay twice for the same thing, why force employees to choose between filing a complaint with the ministry or following the process of common law within the courts? Some employees take their employers to Small Claims Court for money owed under the Employment Standards Act because they need it sooner rather than later.

There are often lengthy delays before employment standards claims investigations begin. The investigation takes anywhere from three to 12 more months, and then the employer can still stall payment. The way to solve

this problem is to make sure that Employment Standards Act claims are resolved in a reasonable period of time.

Some employees sue for unjust dismissal, and the courts often award more termination and severance pay than the Employment Standards Act actually calls for, but because of the legal costs, this law is only practically available to long-service, high-ranking employees. It seems that a better way to protect the most vulnerable workers would be to bring the Employment Standards Act into line with common law.

Also under Bill 49, unionized workers will not be able to make a claim through the ministry but will have to file a grievance. Unions, and not the government, will have to enforce employment standards for their members. Denying publicly funded enforcement mechanisms under the Employment Standards Act amounts to flagrant discrimination against unionized employees; it also prohibits certain segments of the taxpaying public from having access to the publicly funded enforcement mechanisms under the act.

1030

Access to the Employment Standards Act by unionized employees was an inexpensive and relatively expeditious method of proceedings, having proved useful particularly in situations of workplace closures and with issues such as severance and termination pay. If the standards in the act are truly minimum standards, they should be enforceable in a like manner in respect of all employees in the province.

Arbitration is not a substitute under the Employment Standards Act because there is no investigative component by a neutral third party in the arbitration process. The effect of the proposed amendment is that the enforcement of public legislation has been contracted out to workplace parties. In other words, it has been privatized. If cost savings need to be made, they should be done fairly, not in a way that punishes a certain segment of the workforce disproportionately.

The Ministry of Labour is notoriously weak at collecting moneys owed to employees by employers. In 1995 the Ministry of Labour's collection department was closed and its duties given to already understaffed regular investigation departments.

Bill 49 gives private collection agencies the job of collecting money owed to workers by their employers. These agencies can push for a quick and lower settlement to get their own fees sooner. Workers are often encouraged to accept incredibly low offers by employers. In one case the Ministry of Labour wanted workers to settle for five cents for every dollar owed. Anyone who has had expertise with private collection agencies knows that the prime objective is to obtain a quick settlement.

The idea of private collection agencies presents some pretty horrific pictures. Certainly the Durham Coalition for Social Justice is very concerned that the proposed amendments will reduce employees' entitlements under the act, and we have stated repeatedly that the most vulnerable employees in the province will suffer the greatest disadvantages.

Clearly the government has signalled that it has little interest in maintaining employment standards for all its citizens, and we have to recommend some administrative

changes. We recommend that anonymous complaints be allowed, with full investigation audits of employers' practices triggered by anonymous complaints; mandatory posting of the act in all workplaces; and severe penalties for firing a worker for attempting to enforce the act. Thank you.

The Chair: Thank you very much. We appreciate your taking the time to make a presentation here before us this morning.

CANADIAN FEDERATION OF INDEPENDENT GROCERS

The Chair: With that, we'll move to a presentation from the Canadian Federation of Independent Grocers. Good morning. Welcome to the committee.

Ms Mary Davies: Good morning. My name is Mary Davies. I'm with the Canadian Federation of Independent Grocers. Joining me this morning is Grace Galati, one of our retail members. They own Galati Bros Supermarkets. They have six stores here in the Metro Toronto area. Hopefully Grace can help with any questions we may have following the presentation.

The Canadian Federation of Independent Grocers appreciates the opportunity to provide input on the perspective of independent grocers as small business operators across the province into the current and future focus of the Employment Standards Act. The act plays a critical role in ensuring that clarity and fairness characterize the relationship between employers and employees.

The provisions and regulations of the act have evolved over time, and we believe that this evolution is an ongoing process as the factors characterizing our marketplace and the priorities and values of society continually change. Therefore it is necessary and timely that the government review and update the act to ensure it is relevant and operating effectively to meet the needs of employers, employees and the government.

The Canadian Federation of Independent Grocers is a non-profit trade association founded in 1962 to further the unique interests of Canada's fully independent and franchised supermarkets. Of CFGI's 3,800 members across Canada, 34% are located in Ontario, which represents over \$4 billion in retail food sales in the province. CFGI members are located in every urban and rural community in Ontario and employ more than 50,000 people. Members include Galati Bros Supermarkets, Highland Farms, Longo Brothers Fruit Markets, G.A. Love Foods, Farm Boy, IGA, Your Independent Grocer, Knechtal, Mr Grocer, Food Town and Loeb, to name a few.

In announcing the first part of a two-phase reform process, the labour minister stated that the act will "cut through years of accumulated red tape, encourage the workplace parties to be more self-reliant in resolving disputes and," most importantly in our view, "make the act more relevant to the needs of today's workplace." Since the start of the 1990s many retail sectors of our economy have been seriously affected by major competitive pressures. It's important to understand what some of these pressures are as they influence some positions we have taken in relation to the Employment Standards Act.

(1) There is continued economic uncertainty. Despite Ontario's economic recovery, consumer confidence, thus spending levels, have continued to remain low and price deflation has characterized the grocery category.

(2) Increased competition from new retail formats has also had an influence. The establishment of the large discount format stores in the Ontario market and the growth of established mass merchandisers that now carry a substantial portion of grocery products on their shelves have provided formidable competition to the traditional grocery channels.

(3) Overstoring: An excess of retail square footage continues to characterize the grocery industry as square footage among traditional supermarkets continues to grow as a means of capturing market share even when, in some areas, the current population levels do not sufficiently cover this support.

Finally, high operating and input costs for business has also played a role in the competitive position. There are two areas in particular which increase costs for independent grocers. First, independents tend to offer a higher level of service as a competitive advantage — for example, more department clerks and front-end personnel — and as a result, proportionate to larger competitors, independents experience higher labour costs. Second, due to new retail formats entering the market, many grocers have of necessity invested in major renovations or new stores to remain competitive. Obviously, building and new equipment are a costly venture. In the long term, hopefully it will prove to be useful investment.

Collectively these factors have created an extremely difficult economic environment for independent grocers and as a result have required grocers in both rural and urban communities to keep their costs in line while balancing the needs of the customer. Labour accounts for the single greatest cost for the grocer based on wages, benefits and all payroll taxes. While a specific review of the provisions will be taking place, as we understand, in the second phase of reforms, there are two key issues for independent grocers that we want to address up front in this process.

The first is the setting of the minimum wage. During the first half of the 1990s, independent grocers were not only forced to reduce the overall number of people they employed, they also had to replace a number of full-time employees with part-time workers. This was not only due to market conditions and increased payroll taxes but also the result of major increases to the minimum wage within a very short period of time. In moving forward, an essential reform is to depoliticize the policy of minimum wage increases and establish affordable benchmarks for determining what the minimum wage level should be at any one time.

The second issue we want to mention relates to Sunday shopping as a regular business day. While not initially supported by all retailers, Sunday opening has become a regular business day. For many grocers, Sunday has become one of the top three days in terms of sales volume for the week, but it is important to note that Sunday opening has simply spread the existing sales over seven days instead of six. As a result, independents are seeking to have Sundays treated as a regular business day

rather than a voluntary day for employees. Because employees can presently opt out of working on Sunday, it creates scheduling problems; therefore many employers have to pay premiums to obtain the labour required.

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CFIG will be seeking these changes to the act as a part of the phase 2 reform process.

In responding to the reforms in Bill 49, while there are a number that CFIG supports — including the use of private collection agencies if it ensures efficiency and collection rates improve, and the setting of minimum and maximum amounts for employment standards claims — there are four areas of particular interest to the independent grocer.

The first area deals with the limitation periods for claims, proceedings and appeals. CFIG is very supportive of the proposed revision in Bill 49 which would limit the ability of employees to file claims with the ministry up to six months. We agree that this change will make claims easier to investigate and settle, as the timely gathering of information will ensure that it is accurate and that the witness's testimony is still relevant. The older the complaint, the longer and more difficult will be the investigation with its resulting higher costs. In addition, this change will bring the Ontario provision in line with other provincial jurisdictions.

CFIG also supports the proposed change to increase the time limit to appeal orders from 15 to 45 days. The increased appeal period provides a more reasonable time in which to allow the parties: (1) to negotiate a settlement in lieu of an appeal; (2) more fully consider the merits of filing an appeal; and (3) make the necessary payment of the amount of the order and administration costs to the director in order to apply for the appeal.

The second issue deals with negotiation of employment standards and collective agreements. This proposed amendment is closely linked to the outcome of the more detailed review of the Employment Standards Act as part of the phase 2 reform process. Some of the flexibilities that employers with both union and non-union employees are seeking in such areas as hours of work, overtime pay and severance pay, to name a few, will hopefully be part of a revised Employment Standards Act.

With this goal in mind there is still merit in investigating the opportunity for employers and employees to negotiate their own standards for hours of work, public holidays, overtime pay, vacation pay and severance pay if the negotiated standards, as a package, provide greater rights or benefits than those in the act.

The ability to assess greater rights or benefits as a package will help achieve greater self-reliance and flexibility, but there are a number of questions in terms of calculating the value of one benefit over another, for example. CFIG supports the opportunity to consider this further in the second phase of reform.

The third item addresses the avenues for addressing alleged violations of the Employment Standards Act.

As a first line of dispute resolution, CFIG supports the granting of power to the employment standards officer to resolve a complaint upon the mutual agreement of both parties before the complaint investigation is completed and that these settlements are binding on the parties. This

so-called in-house dispute resolution mechanism should be more efficient and effective in resolving complaints, resulting in lower costs for employers, employees and government.

Currently non-unionized employees are able to have employment standards disputes dealt with by the courts as well as by the employment standards branch. Unionized employees are able to file grievances under a collective agreement to be dealt with in the grievance and arbitration process and may also file complaints with the employment standards branch.

The ability for employees to take concurrent action can be as unmanageable and costly for employers as it can be for the other parties involved. In addition, in cases where a claim is made in the courts and to the employment standards branch, public resources are being tapped at two separate levels. This can be inefficient and unnecessary. Individuals should always be able to exercise their right to pursue their case in the courts but not as a multiple venue to determine where the best settlement can be reached. CFGIF agrees that in cases of disputes involving non-union employees, they must decide whether to file their claim with the ministry or pursue a civil action in the courts.

Finally, clarifying entitlement to pregnancy and parental leave: At present, many grocers with both union and non-union employees already ensure that employees taking pregnancy or parental leave continue to accumulate vacation time during their absence from work. Therefore, this amendment to the act supports an existing practice of many employers. But CFGIF members do not support accumulating vacation entitlement for a workplace leave of absence for any reason other than pregnancy or parental leave. This diminishes the effectiveness of the vacation entitlement provision and can be misused by employees. In addition, this practice would be unfair to those employees who have worked the full 12 months and are clearly entitled to an increase in vacation time. Therefore, this amendment should only apply to employees taking pregnancy or parental leave.

In conclusion, CFGIF appreciates the opportunity to provide input into the proposed changes in Bill 49 and supports the two-stage process for the employment standards reform. This review process is timely, and we believe that many of the initial phase 1 amendments will encourage workplace parties to be more self-reliant and ensure that the act continues to be more relevant to the needs of today's workplace.

We would urge consideration of the issues and questions that we have raised to clarify the proposed amendments and ensure that they meet the needs of small businesses like independent grocers.

The Chair: Thank you very much. This affords us one minute per caucus for questioning.

Mr Lalonde: Thank you for your presentation. I have one question. You say that you agree with the limitation period for the claims, but you didn't touch at all on the period for settlement and also the two-year period that the employer will have to remit the amount of money owed to the employee. Don't you think one of the reasons we only had 24% of successful settlements in the past was because of the lengthy period of time that was given to

the employer to settle and also to do all the research, the investigation?

Ms Davies: Yes, actually, we wouldn't disagree with that. While we didn't touch upon that in our statement this morning, we do agree that it's something that needs to be tightened up and that the whole area relating to non-collection is an issue that does need to be addressed by the ministry in this reform process.

Mr Christopherson: Thank you for your presentation. I would assume, and I mean this quite sincerely, that your members would not be interested in being able to compete by being able to pay below minimum wage. That's not one way that you'd want to be able to compete with your competitors.

Ms Davies: No, it's not.

Mr Christopherson: Right. I think, then, it's fair to say that we've established the idea that there are certain minimums that workers are entitled to, and the Employment Standards Act, of course, is the workers' bill of rights where there's no union. That's all they have.

When I looked at the competitive issues that you face, the overwhelming majority of them have nothing to do with the actual workers themselves. So one of my difficulties is understanding, if you agree that there are minimum standards that no one should have to work under and that most of your competitive things are not related to that particular law and that that's the absolute minimum standard that's around, why would you support a piece of legislation that lowers those minimum standards, which this does?

Clearly, presentations all across the province have shown that certain rights and minimum standards that workers have, particularly non-union, as individuals, are being taken away by Bill 49. I mean, you don't have globalization to use as an argument, because a store on the corner is not going to be competing with a store in Hong Kong. Would you not agree, though, that we ought to maintain absolute minimum standards which no worker should have to work below in the province of Ontario?

Ms Davies: Absolutely. I don't think we've said otherwise. We strongly support the need for a strong Employment Standards Act. So my question back is, where has Bill 49 reduced the critical employment standards?

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Mr Christopherson: A number of issues have come up. First of all, there's the inability now of a worker to claim back to two years' money they're owed. This is going to limit it to six months. The government's giving itself the right to regulate a minimum claim level, which means they could peg it at \$100 or \$200, and if your claim is below that, the ministry will not move it for you; they will not move that file along. If you can't afford to hire a lawyer and you can't afford to take time off work, that money's going to be gone. We're dealing, of course, with the real bottom-feeder employers, I grant you that, but these are the minimum standards that we're talking about. There's now going to be a cap of \$10,000 on how much the Ministry of Labour will fight for a worker to get back. Right now, there's no cap.

So there are three clear areas that we've heard over and over in every community where rights are being

taken away and the standards are being lowered, and by offering such blanket support for Bill 49, you're in agreement with that.

Ms Davies: Just to respond and to close, we would disagree with your points that those items are lowering the standards in terms of shortening the claim period or in setting the maximum. That maximum is substantially over what was set in 1991, prior to eliminating it. Looking at our own industry, we think that more than addresses, for the employee, claims being made. So we would disagree.

Mr Christopherson: Fair enough, but by that argument we should go back to the 1900s legislation, because that was once different too. We're not supposed to move backwards.

Mr E.J. Douglas Rollins (Quinte): Thanks for your presentation. It's reassuring to think that with the wisdom that the government has seen in Bill 49, there are some people out there who support it even though our opposition across the floor totally disagrees with the ability that you as a private individual can conduct a reasonable amount of goodwill between you and your employees to be able to have to work on Sundays and holidays and things of that nature. You people pay extremely well in many cases. I think it's imperative to have that kind of expression brought forth. Believe me, there are some bad bosses out there, and there are probably some in your industry too, who use their advantage over them, but there are many who aren't. Do you know of many complaints through the standards through your group or not, or do you hear of them?

Ms Davies: We did a fairly extensive survey of our members. There are 1,300 in total across the province. Not to say that you won't always find bad apples in any sector — that always has to be addressed — but we clearly had very strong support from the majority of the members for the proposals put forward in Bill 49 and for looking at the next phase.

One of the things that clearly came forward, and Grace can probably back this up as an employer with six stores, is how critical the Employment Standards Act is in ensuring that it's black and white in terms of what is acceptable and what is unacceptable in the workplace.

The Chair: Thank you both for taking the time to make a presentation before us here this morning.

RETAIL COUNCIL OF CANADA

The Chair: That leads us now to the Retail Council of Canada. Good morning. Welcome to the committee. Good to see you again.

Ms Elizabeth Mills: Thank you. My name is Elizabeth Mills. I'm the director of government relations at the Retail Council of Canada. We appreciate this opportunity to address the committee this morning to reflect our views on Bill 49.

The Retail Council of Canada is a national not-for-profit trade association representing 7,000 Canadian retailers, 90% of whom are independently owned and operated. We represent over 65% of Canada's retail store volume. Affiliated with our council are approximately 100 sectoral-specific and regional associations whose

members, among them, account for a substantial additional percentage of retail volume.

The retail industry accounts for approximately \$187 billion in sales, of which Ontario represents 40%, or \$75 billion. The Ontario retail sector employs approximately 532,000 employees. The Ontario retail sector employs one out of eight workers. It is estimated that the top 40 retail firms in Ontario employ just over 50% of the workers in the province in the retail workforce, while the smallest 80% of the retailers employ less than 12%.

The retail industry's interest in ESA reform stems from the characteristics that make the industry unique and challenging. In fact, while the framework of the ESA has not changed in many years, the retail industry itself has been constantly changing and challenged. The myriad of exemptions and exclusions that have been made to the ESA outside of that framework in the past only highlight the need for a comprehensive reform. The Retail Council of Canada views the changes proposed in Bill 49 as a point to begin a much-needed process of more comprehensive review, and the retail council is glad this government intends to progress to a second phase of reform.

The retail sector is a fast-paced sector characterized by constant change and numerous, ever-evolving opportunities. The industry's vibrancy is evidenced by the ongoing proliferation of new store types and configurations, from the entry of big-box category killers, wholesale clubs and specialty niche retailers to the emergence of regional power centres and, though still embryonic, home shopping on cybermalls.

The retailer's goal is always to keep one step ahead of the competition without losing sight of the consumer, who is increasingly demanding top value, selection and convenience. Retailers are responding by honing their marketing, pricing and merchandising policies, giving customers an expanding range of shopping options.

There are other challenges testing the mettle of retailers today. Whether economic or demographic in nature, retailers are responding to the challenges facing the industry by reducing their costs to keep product prices competitive. They are computerizing their operations, adopting just-in-time supplier policies, launching strategic partnerships with vendors and exploring new promotional avenues, including database marketing, to better understand and target the consumer. Pioneering efforts are also being made in such non-store retailing areas as CD-ROM catalogues and the Internet. All of these pressures demand greater flexibility and adaptability to rapid change.

The retail workplace is a dynamic environment for both the retail employee and the employer. In our workplaces, work schedules are flexible to meet the customer's needs. Shopping for food basics to large appliances, clothing to luxury items occurs in a myriad of settings and time frames. The retailing industry also relies heavily on the use of part-time employees to serve the demands of customers at the lowest cost. This reliance stems from Canadians' very uneven shopping pattern habits, with surges of customers shopping on certain days and during certain hours, never one that is constant.

For many merchants there's also a seasonal pattern which requires varying levels of staffing for different

times of the year. The flexibility of part-time workers meets the needs very well, at a competitive cost. Part-time retail employees are part of a unit's employment pool. This concept results in a very different employment relationship than is traditionally conceived of. Part-time employees in a unit's employment pool constitute a group of people who will normally be scheduled to work a certain number of hours per week at times agreed to between the employee and the manager. There's considerable flexibility and the employees, both casual and regular part-time, can and do adjust to the timing of the number of hours. Additional hours may be offered, which the employee is free to accept or decline. Employees may trade times with the agreement of management, and times of work may be varied with the agreement of both the employee and the manager. This arrangement serves the retailer very well in permitting both flexibility and cost control. It also serves the many needs of employees who experience other demands on their time and value the flexibility it offers, especially to students and second-income earners.

The challenge of ESA reform is to facilitate this diversity and flexibility in the best interests of both parties and to provide appropriate, effective protection. It is also evident that a traditional command-and-control model does not work, as this system is both unresponsive, inappropriate and ineffective.

The kind of flexibility that allows workplace parties to compete and thrive is what we are striving for. Innovation within the workplace is the hallmark of success in retailing today. These same characteristics need to form the basis of a comprehensive review of the ESA that brings into focus the answer to basic questions: What is the objective of the act and its regulations, and how do we achieve those objectives with flexibility and innovation that attracts and encourages economic growth and employment in retailing, an industry that is struggling?

The Retail Council of Canada supports a two-stage process of reform. This first stage deals primarily with efficiencies in the system. The second stage, as outlined by the government, offers a more comprehensive program dealing in its effectiveness. The goals of reform can only be realized when the comprehensive review of the ESA is undertaken to update and modernize the framework of the act to match the current and future potential of Ontario's workplaces and industries. Bill 49 is a good first step and recognizes the role of legislation in protecting effectively the interests of employees. It makes the system more efficient. The second stage of reform could make the system more effective in different and new environments.

The Retail Council of Canada supports the following goals of reform:

This bill should continue to protect minimum employment standards in Ontario. The changes proposed are a first step towards improving the protection of minimum standards in Ontario as the Ministry of Labour is allowed to focus its resources on those most vulnerable.

This bill should also allow the Ministry of Labour to effectively and efficiently use its resources to improve administration and enforcement of the standards to vulnerable employees; to reduce the ambiguity of inter-

preting and understanding the ESA by simplifying definitions and using plain language; to streamline procedures to ensure complaints are resolved fairly and expeditiously.

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These reforms should encourage greater self-reliance and flexibility among the workplace parties as we are challenged.

The government has indicated that the proposed changes to the ESA, as outlined in Bill 49, are only a first step to meet these goals. This provides us an opportunity to examine Bill 49 against these goals of reform and measure the magnitude of work that remains to be achieved in phase 2 of reform.

Does Bill 49 change the essential minimum standards? In our view, Bill 49 does not change any of these standards. There will be an opportunity to discuss these standards later this year. However, by streamlining the administration of the act in several areas, it does allow the Ministry of Labour the opportunity to better focus its resources on the enforcement of standards and the protection of employees.

Does Bill 49 make it easier to understand? Yes, the changes made to the entitlements, particularly around pregnancy leave and parental leave, offer greater clarity and understanding. It is, however, just such clarity that employees and employers across the province are seeking in other areas of the act. More plain language and a modern framework will go even further to create an ESA that can be easily communicated so workplace parties can clearly understand their rights and obligations under the act.

Does Bill 49 target enforcement and streamline administrative systems? Yes. This is perhaps the single greatest contribution of Bill 49. The introduction of limitation periods, maximum and minimum claim amounts and the choice of procedure to pursue — the ministry or the courts — settling disputes before investigation, the use of private collection agencies and others better leverage the impact of resources, as they are limited, towards its legislative responsibilities.

Does Bill 49 promote innovative approaches that foster self-reliance? I think Bill 49 does this. It encourages and asks unionized workplace parties to work more cooperatively together. We support the use of the unionized grievance procedures, as outlined. It will encourage dialogue and creative solutions to evolve first from within the workplace. In stage 2 of reform, it would be beneficial to examine and assess the opportunities for non-unionized workplaces to use their own internal grievance methods as well. Bill 49 therefore offers a hint of flexibility that should be considered in all workplaces.

In examining the limitation periods for claims proceedings and appeals, retailers view this as a first positive step that brings timely resolution to workplace issues. The six-month limitation period moves Ontario in line with the other provinces where national retail chains, both grocery and general merchandise, operate — Alberta, British Columbia, Manitoba, Newfoundland and Nova Scotia. It adds clarity to the investigation of claims, due to the timely reporting and evidence collection.

Minimum and maximum amounts for employment standards claims: The retail council would expect that the

\$10,000 maximum limit amount to cover the majority of claims in the retail trade is appropriate. The retail trade is predominantly part-time and one that pays modest wages. Where this threshold is exceeded, it will more likely involve a senior employee and/or a more complex dispute, where a court case may be a more appropriate avenue for addressing alleged violations of the Employment Standards Act.

The retail community, whether unionized or non-unionized, would prefer to resolve some disputes internally, either through the collective agreement grievance procedure or an approved internal dispute mechanism. It encourages communications and fosters self-reliance among and between the workplace parties. The preference is to resolve disputes cooperatively, rather than use formal and expensive adversarial methods. This provision allows those most informed about the issue to react in a responsive way that leads to creative and tailored solutions for the workplace. The retail council believes this will be beneficial for the union and non-unionized workplaces, and employees in particular.

The provision for the claimant to elect either the ministry or the court will eliminate the notion of shopping for the best adjudication, eliminate duplication and focus the resources of the ministry on those employers and employees seeking assistance, whether that's information or support.

The authority to settle complaints at the outset will provide officers with greater flexibility, expedite dispute resolution and therefore, again, reduce the cost of retailers, employees and the ministry.

We support the use of private collection agencies. This, along with several other measures like clarifying the entitlement to pregnancy and parental leave and the additional administrative measures outlined in Bill 49, adds to the efficiency of the act and actually supports the one principle that retailers are all commonly supporting too, which is that consistency and clarity are needed.

Bill 49 is urgently needed, but more urgently needed is the second phase of reform. The ESA is particularly out of date with respect to the retail industry's current and future challenges. Like the retailer, the ESA needs to keep Ontario one step ahead of the competition without losing sight of the consumer: employees and employers of the province who are increasingly demanding top value, selection and more convenience of access. Bill 49 is a positive first step.

As the Ministry of Labour introduces these proposed elements of flexibility, there will be some workplaces which will require assistance and will seek direction or guidance as the relationships in the workplace change.

The Retail Council is also looking forward to the upcoming discussion paper that the ministry has announced will be released later this fall to continue the process of reform.

All of this is respectfully submitted.

Mr Christopherson: Thank you very much for your presentation. You may have seen in the media over the last couple of days the sweatshop fashion show that I think made quite an impact on the people here. There is now an effort under way to establish ethical practices in sourcing and production by women's apparel producers

and sellers. I'm advised that there was a questionnaire sent out to 40 of the senior officers of major women's apparel retail chains in Canada, many of those here in Ontario. I wondered if the people who are pushing to advocate those ethical practices being established can count on the retail council, not only to be supportive, but to be an active participant in ensuring that those kinds of ethical practices are brought about. Can I ask you what your level of commitment would be and what you might be prepared to do to help?

Ms Mills: With respect to the questionnaire, I was actually advised also by a group this morning. I received a copy of a letter that was sent to the president of the Retail Council of Canada outlining their request for further assistance. Certainly, the Retail Council of Canada, along with the experience that I think is probably more public in the United States — several sweatshops have been exposed in that area as well. We will be pursuing what we think is an appropriate path of support. We are concerned about ethical standards within the industry. This topic has been raised by our members and the retail council is looking at options that we can do to explore it. I will commit to get back to you, Mr Christopherson, and the committee, if you would like, about the action we will be taking.

Currently, our members are also seeking information from their national headquarters across the border, as well as their counterparts in other countries, to see what is the appropriate venue for retailers who often purchase their goods offshore to ensure that when we are making purchases, to the best of our knowledge, our suppliers are treating their employees with the same respect that we expect our employers in the province to do.

Mr Christopherson: Good. That's encouraging. Would you be prepared to meet with the group to talk about these sorts of things in a face-to-face meeting?

Ms Mills: I would certainly go back to the retail council and ask its members and our president to do that. I think that would be a good idea.

Mr Christopherson: I think it would be very helpful if you could do that.

Ms Mills: No problem; I'll be happy to address that question to them.

Mr Baird: Thank you very much for your presentation. We appreciate it. You brought up on page 8 of your brief the issue with respect to private collection agencies. I guess one of the biggest disincentives to both workers coming forward to make a complaint and the employers who are ordered to pay money is that right now we are only collecting 25 cents on the dollar. Workers say, "Why would I bother going through the whole process and fearing retribution from my boss if I came forward?" if they know that there is only a 25% chance they are going to get the money that is owed to them. Conversely, it becomes a bit of joke among employers. Why would any unscrupulous employer pay if they don't have to? Regrettably, the last two or three governments, ours included, haven't been able to collect more than 25 cents on the dollar. In your experience, do you think that bringing private collection agencies would provide a greater incentive for those companies that are ordered to pay up?

Ms Mills: There's an incentive to pay up, but from our side too there's another view. We use private collection agencies. Our companies, if we have purchases through credit cards or other options for payment, would also have experience with and exposure to this system. The introduction of the ministry using those same services is one that companies would be familiar with and I think the employers would favourably look at that as a more regular method of collecting.

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Mr Baird: Why would your members use collection agencies? Why wouldn't they just do the work themselves?

Ms Mills: It's a very expensive internal process. In a streamlined, competitive environment you cannot expect a large retail chain or a small retail chain to incur that kind of expense, especially if somebody else has the expertise and the resources fully devoted to it on the outside.

Mr Baird: So your members would farm that out to collection agencies because those collection agencies could do a much better job than your members could in collecting that money? That's exactly my view within the government.

Mr Lalonde: Thank you for your very good presentation. I would imagine that the majority of the employees you represent would be in fast food stores and all those places like that?

Ms Mills: Actually, retail is general merchandise, grocery and apparel. Fast food is with the Ontario Restaurant Association.

Mr Lalonde: So it's not within your group?

Ms Mills: No.

Mr Lalonde: In the past, did your group understand very well the previous ESA?

Ms Mills: Yes.

Mr Lalonde: You had to work at the time with the complaints you received from the employees and refer to the ESA?

Ms Mills: We don't often get the employees asking questions. What we often have is an employee-employer relationship and a request for information by the employee, or an employee saying that there is something wrong in their relationship and the employer is also seeking information and clarification.

Mr Lalonde: Have you had the experience with some of the employers that have received complaints or claims for not paying holiday pay or overtime or statutory holiday pay?

Ms Mills: No. We don't get those complaints coming to the Retail Council of Canada, but what we do end up with is a lot of questions for clarification. The act is very difficult for those employers, especially the smaller retailers, to understand. What they're looking for is not only an ability to understand their obligations but then also to have mechanisms to explain those rights and obligations to their employees. Often, what we've found is that with the provision of some clear information, either the fact sheet system that's currently being developed by the ministry or some policies that are within the ministry — we call the ministry on their behalf and find out the information and pass it along — those disputes

are often resolved without going further than that. Seeking information through either the retail council or through a clearly, more easily understood act is often useful.

Mr Lalonde: On page 8, you refer to private collection agencies. I fully agree with you in this case that the amount paid to the collection agency should be on top of the amount of money owed to the employee, because at the present time I don't think we have seen anyplace that this amount or the commission has to be paid by the employer. But you would agree with this, that it has to be paid by the employer?

Ms Mills: The collection fee?

Mr Lalonde: Yes.

Ms Mills: It's being eliminated, is it not?

Mr Lalonde: I don't know if it has been eliminated, but you have shown that —

Ms Mills: To the employers who pay the order on time, the collection fee would be eliminated. That's the current practice.

Mr Baird: There would be no fee.

Mr Lalonde: Yes, but if the employer is not paying within the period of time required, who should be paying the collection fee?

Ms Mills: I think that would be the employer, just as when you are charged a fee outside.

The Chair: Thank you Ms Mills, for making a presentation before us this morning.

ONTARIO MINING ASSOCIATION

The Chair: That takes us now to the Ontario Mining Association. Good morning and welcome to the committee.

Mr Patrick Reid: Thank you, Mr Chairman. My name is Patrick Reid. I am the president of the Ontario Mining Association. John Blogg is manager of industrial relations for the Ontario Mining Association and John Keenan is vice-president of human resources, Falconbridge. These are the two experts. Mr Blogg will make the presentation on behalf of the Ontario Mining Association. We'll all be available to answer questions.

Mr John Blogg: We are not going to read the presentation. I'm sure you've heard just about everything that everybody has said over the last few weeks. I will preface the presentation with what we think is some new information that provides our industry with some disturbing facts that lead us to support Bill 49.

I should say in advance of that, though, just for those people who may be new to the Legislature, a little bit about the Ontario Mining Association. The OMA was set up in 1920 as a non-profit organization to represent the collective interests of the mining industry. Today the OMA represents about 43 companies, including operating mines, diamond drill operators, mining contractors and industry service suppliers, which are everything from actuarial firms to equipment suppliers. Our industry provides 72,000 direct and indirect jobs to Ontarians, over \$4.2 billion in annual personal and corporate income and \$1.1 billion in revenue to the provincial government.

Our industry was pleased to see the minister take the bold step to revamp the Employment Standards Act as a whole. It is our view that for too long this statute has

been unwieldy to understand, administer and enforce and that there needed to be some clarity so that all workplace parties could understand what the act was really saying, and for employers, so we could more easily work with our employees and comply with the requirements of the statute.

We looked at a recent jobs study that was done by the Organisation for Economic Co-operation and Development. It was released in 1994. That study reported that there were 35 million people unemployed in OECD countries, of which Canada is one, and perhaps 15 million more who have either given up looking for work or are unwilling to take part-time work. The jobs study concluded that structural unemployment, or the component of unemployment that is not cyclical and persists into economic recovery, grows from the gap between pressures on economies to adapt to change and their ability to do so. You've heard some people say that part of the reason for unemployment is the technological move over the last several years. This jobs study looked at the technological change in the 25 countries and concluded that it was not a cause of structural unemployment. What the job study did say is the following:

"Adaptation is fundamental to progress in a world of new technologies, globalization and intense national and international competition. The potential gains may even be greater than those which flowed from the opening up of economies after World War II. But today, OECD economies and societies are inadequately equipped to reap the gains. Policies and systems have made economies rigid, and stalled the ability and even willingness to adapt. To realize the potential gains, societies and economies must respond rapidly to new imperatives and move towards the future opportunities.

"It is an inability of OECD economies and societies to adapt rapidly and innovatively to a world of rapid structural change that is the principal cause of high and persistent unemployment."

When they looked at Canada they said we had a rather inflexible labour market, with both strong employment growth and a strong upward trend in unemployment over the long term. That caused us to be really concerned about where we're going in an industry that is constantly changing and has been for some time, moving towards high technology but moving out of lockstep with how legislation is applied. We felt, and we believe, that legislation needs to keep in touch with the new realities of the workplace environment. One of what the OECD study calls "outmoded" regulations we felt was the Employment Standards Act.

In our support of revamping the Employment Standards Act we have laid out four principles on page 3 of our submission. We find that Bill 49 begins to address three of the four in that Bill 49 looks at the administration of the act and at how the act will be enforced. It also deals, from our perspective, with what's commonplace anyway: the representation of unionized members with employment standards complaints. It has been the practice for some time that the union would represent employees, their members, with Employment Standards Act complaints, and this act enshrines in statute that this is how complaints in those types of workplaces should occur. We fully concur with that.

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What is also interesting that comes out of the jobs study report, and one which our industry has known for some time, and we have been moving towards resolving the problem — Mr Keenan has been an active member in this area — is the fact that workers are becoming more knowledgeable. The "knowledge" worker is becoming the real resource. While industries are trying to deal with that in a positive manner in their workplaces, regulations are becoming a bit cumbersome in allowing the employer to take advantage of the "knowledge" worker. We hope that after phase 2 of the reform is known and put into place, these types of impediments to our industry moving forward in a positive way with our unions and clients will be resolved.

We have a concern with one part of Bill 49, and you've probably heard this from a number of employer groups and maybe even some labour groups: section 20. We believe that the present wording of section 20 of the bill may be providing — we don't know this; we don't know what the intent of the government is for sure — an unintended result. In stating that the arbitrator who resolves complaints through the collective agreement process has the same powers as an employment standards officer under his normal powers, you may be giving him more power than what is intended.

Furthermore we have concerns with regard to how the arbitrator's decision would or could be appealed and the standards that would be necessary to allow an appeal to occur. You've heard from others, I am sure, that under arbitral jurisprudence the decision must be appealed by way of judicial review, and the standard to successfully overturn a decision requires that the decision be patently unreasonable. It's our contention that the judicial review process is extremely expensive and the burden extremely onerous. We believe that it may be beneficial to have a more accessible and affordable appeal mechanism in place in these situations.

It is also important, in our view, to ensure that section 20 does not expose the act to abuses or use to pursue other agendas. Arbitrators should only be allowed to deal with substantive standards such as vacation pay, public holidays, termination pay, severance pay, pregnancy/parental leave, minimum wage, hours of work etc. Excluded should be such things as benefits plans, sale of business, related employers and policy issues as they add a dimension in complexity that could lead to unintended results. If limits are not provided for in section 20, the section could be used to further a bargaining agenda, which we don't believe should be the intent of the Employment Standards Act. Consequently we think there need to be some language changes with section 20.

On page 6 we've given you a list of conclusions as to why we believe that the Employment Standards Act needs to be changed. If those changes are put in context of the objectives we have set out in this submission, unions, employees, employers and the government too would be well served by those changes.

As a final comment, we in the mining industry know very well that change is never easy. We have been evolving for a number of years and have experienced those kinds of pains that go along with change. We also

know that change in legislation that tries to provide basic protection while at the same time providing flexibility is among the toughest type of legislation reform to perform.

However, as pointed out in the OECD study, the greatest threat to job creation and protection is the jurisdiction's inability to reinvent its regulatory environment so that it will work today and tomorrow in a manner which is good and right for all its citizens.

To quote the OECD study one last time, "Motivation to protect people from at least the worst vicissitudes of economic life, governments, unions and businesses has progressively introduced labour, market and social policy measures and practices which, in achieving their intended ends, also have had the unintended but more and more important side-effect of decreasing the ability, and sometimes also society's will, to adapt."

We think the major problem we have seen over the years is that inability to want to adapt. We are hopeful that with Bill 49 as the beginning of the move, with the Employment Standards Act, to change, if we work together we can get a piece of legislation that does not reduce minimum protection for those who have it under the current law but allows the flexibility and needs of the business community to move forward in what is now a global marketplace.

The Vice-Chair (Mrs Barbara Fisher): Thank you very much. That leaves us with officially a minute per caucus, but as I see it right now we don't have a further delegation.

Mr O'Toole: Thank you, John. It's good to see you again. I'm pleased the government is getting along with the OMA. That's not the Ontario Medical Association; it's mining.

Mr Blogg: We're the good OMA.

Mr O'Toole: That's my attempt at humour. For the record, we are getting along with the OMA.

I think the OECD report, which I've read, addresses the issues of change in the world of work. I think it should be more widely read. Our youth certainly have to look forward to the changing dilemma. Perhaps some explanations that you've given — have you read the Carr-Gordon report, which talks about barriers to growth? The whole Ministry of Labour, technically, is seen as kind of a barrier to job creation. I'm not criticizing the individuals; I'm saying the philosophy. Have you read the report?

Mr Blogg: Yes. We have read the Carr-Gordon report.

Mr O'Toole: Do you support the view that there have to be some resource business types of things done in that ministry, not just Bill 49?

Mr Blogg: Yes.

Mr O'Toole: Good. The one technical question you've raised which I perhaps support is the arbitration, the appeal process. What kind of a review or appeal process, particularly in the judicial review, would you like to see? A tribunal?

Mr John Keenan: I don't think we've really come to grips with that to know how to answer the question. Our concerns are expressed. It could be. What we would like to see is something a lot simpler, not something that would potentially take up the time of the courts.

Arbitrators' decisions in the province, by and large, are accepted by the parties and very few — I don't know

what the percentage is — ever go for judicial review. Our concern is that because of the complexity of the issues that may come before arbitration as a result of these amendments, this might increase. While it may tie up the courts too, it will certainly extend the period.

Our view is that there should be some form appeal built right into this, a very simple, straightforward appeal, perhaps an appointment of an oversight or review process by the minister, sort of like arbitration on top of arbitration but within a very tight time limit, similar to the type of situation that, as far as time limits and process, exists for section 46, I think it is, arbitration. The detail of it we really haven't —

Mr O'Toole: Does the OMA intend to participate in the part 2 review of the employment standards?

Mr Blogg: Yes, we do. In fact, there isn't an awful lot of meat in Bill 49 for us. Our industry exceeds standards right across the board. We've dealt with very little in the bill because there's very little in the bill that deals with us, but phase 2 is where we think there will be a lot more interest of our members.

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Mr Lalonde: I too had a similar question to the one that Mr O'Toole had, but I'm just going to go to the other one immediately. Don't you think the period of time they allow for investigation is still quite too long: two years to investigate and two years for the claimant to get paid the money that is owed to them?

Mr Blogg: Yes. The shorter the period of time, of course, the clearer the facts are when you put facts on the table. The bill talks about reducing the time limit for lodging a complaint from two years down to six months. Any of the legal people I've talked to over the last several months, in all forums of law, say the quicker you can get the facts out and get them in front of a review of some sort, the more chance there is of a right decision being made, because people then aren't guessing what the facts were and there's a clear vision of what the facts were on all sides. So I think two years is too long. I think our industry supports the shortening up of the time frame, both the time frame to lodge a complaint and the time frame of payment to the worker.

Mr Lalonde: I really feel that instead of reducing the number of enforcement officers from 150 let's say to 45 or 50, we should have kept those enforcement officers in place and made sure the investigations start immediately when the complaint is lodged. At the present time, the fact that we have two years — it was known in the past that employees or enforcement officers will put it aside probably and wait for the commencement of the 13th or 14th month to start to investigate. This way, they know they have two years, but if they know they only have a year to investigate, the fact that we only go back six months instead of two years, it should shorten the period of time for investigation.

Mr Blogg: All of us have a tendency to work within the time frames given us. So if you shorten the time frame, you do a better job or you do a quicker job.

Mr Lalonde: That's right.

Mr Christopherson: Thank you for your presentation. Let me begin by acknowledging the importance of the mining industry to the Ontario economy, and not just

because of the jobs that are created but because of the economic stimulation, everything. It's a very important part of our economy and I wanted to make that statement.

You make a statement on page 4 that says, "It is clear from our reading of the bill that the implied changes to the Employment Standards Act will enhance employees' protection under the statute, not strip them away as some have suggested." Being one of the "some," I'd like to ask you about a couple of parts of the bill.

I would argue that there's been irrefutable evidence — others would argue differently — all across Ontario that, simply put, putting a cap on how much money you can claim through the Ministry of Labour when currently there is no cap, regardless of the fact that you can go to the courts — there are other remedies, those remedies cost money and that's money that you otherwise wouldn't have to pay if the law was left where it is. So I would argue putting that cap anywhere takes away a right.

Further, putting in place a minimum threshold that says, "If the threshold is \$200 and you've got a \$100 claim, the ministry won't move that claim for you; it will not pursue that \$100," for someone who's a minimum-wage employee, which is what we're dealing with here, rather than many of the better paid people who are lucky enough to be in a union, they're going to lose that money — the filing fee is \$65, \$70 — and/or they're going to have to take time off work. It's just not going to be practical, and the bad bosses — not the good ones but the bad ones — are going to take advantage of that.

I would say to you that those two examples suggest and make very clear that indeed there are rights that are being taken away and watered down. So I would ask you how you would reconcile what I've suggested to you with what you said about this bill enhancing the existing law.

Mr Blogg: It's our view when reading this legislation that by shortening up the time frame and by changing the enforcement sections of the act, what it allows is this government to get at the workers most in need quicker, to identify them, to focus on them, to ensure that they are getting the protection of the statute. With the cap on how much the employment standards officer can allow — I think that's what you're getting at, and that's a \$10,000 maximum — I think you know the statistics out of the Ministry of Labour say that the people who go for claims larger than that are 4% or less. The people who are at the lower end, though, I think if they can get the case into the courts sooner and have the enforcement officers being able to focus on them on a faster time frame, they're not going to be disadvantaged. They are going to have their claims heard and paid for.

Mr Christopherson: A number of things — no?

The Chair: No.

Mr Christopherson: Too bad. There's a good debate there to be had, but thanks for the dialogue.

The Chair: Thank you, gentlemen, for taking the time to make a presentation before us here today. We appreciate it.

LOW INCOME FAMILIES TOGETHER

The Chair: That leads us now to Low Income Families Together. Could they come forward, please. Good morning and welcome to the committee.

Ms Naomi Berlyne: Low Income Families Together is an organization which is governed by low-income people and whose members are all low-income people. We work in popular education, community economic development and advocacy. This brief was prepared by a committee made up of staff and members.

We have examined the proposed changes to the Employment Standards Act in Bill 49 and have found that the result of this bill will be the weakening of employment standards, particularly in the area of enforcement. This will have an adverse effect on the most impoverished and vulnerable workers in our society, who are predominantly women, people of colour, immigrants, refugees and young people.

Sectors where a lot of low-income workers are found include: the garment trade; domestic work; industries where employee turnover is high, such as foodservice and commercial fitness clubs; and small businesses which do not require a lot of capital investment.

Employment standards are supposed to provide a basic minimum below which employers cannot go because it would be detrimental to individual employees and to our society as a whole. Recent governments have not kept the legal minimum wage up to the cost of living. A single person working full-time at the minimum wage is now 12% below the poverty line, and the earnings of a single parent with one child are 35% below the poverty line.

When employers do not pay living wages, society picks up the tab for the resulting poverty which ensues, for example, for the services needed for the children who are never able to develop fully and the increased health care costs. Ontario's current employment standards are low in real terms and in comparison to western Europe.

The enforcement of employment standards legislation has always been a low priority at the Ministry of Labour, with a very small percentage of its budget, but now the current government is attempting to decimate the few resources which are still dedicated to it.

In 1987, the report of the Ontario Task Force on Hours of Work and Overtime noted that non-compliance with employment standards legislation was likely to be common because it was extremely unlikely that violations would be detected; if they were reported and investigated, hardly any penalty would be imposed; and if the moneys they owed were to be assessed, they could probably get out of paying some or all of the amount, as very few efforts were being made to force employers to pay up.

In this context, the current government's emphasis on self-reliance is ridiculous. The various governments of Ontario of the last two decades have been relying on employers to respect employment standards, and it is evident that it has not worked. Roy Adams of the Department of Labour studies at McMaster University has estimated that one in three employers violates employment standards. Since employees can be fired for no reason in Ontario, it is somewhat preposterous to say that they should be self-reliant. Ninety per cent of the employment standards complaints received at the Ministry of Labour are made by employees who are no longer working for the employer they are complaining about, proof that most workers know they would face firing or intimidation if they reported on their current employer.

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Hardly any random inspections of workplaces have been carried out since the early 1980s, so employers have very little to fear. The Employment Standards Act does give the ministry the power to prosecute in certain circumstances, but they have only ever done so in remarkably few cases, in line with the low priority with which the enforcement of employment standards has always been treated.

The current government claims that Bill 49 will streamline the act and encourage compliance. We could not find any evidence of this. It appears that employees' rights are being taken away, usually to the benefit of the employer, and there's no requirement for the employment practices branch to deal with their complaints more expeditiously.

The government is proposing to shorten the claims period for workers from two years to six months. The only remedy that would be left to an employee for violations which occurred more than six months before is to take their employer to civil court. Since the Ontario legal aid plan does not cover employment-related cases, for low-income people that means having no way of getting the wages they are owed, as paying a lawyer is beyond their means. The ministry, however, still has two years to investigate the complaint and another two years to get the employer to pay up. Most low-income workers live from paycheque to paycheque. Having to wait so long for the wages they are entitled to often causes a lot of hardship: inadequate nutrition, overcrowded housing and the inability to buy winter clothing. Reducing the claim period to six months would in fact discourage compliance.

Imposing new maximum and minimum amounts for employment standards claims is also depriving low-income workers of the wages they have earned. It is not that unusual for employees to be owed more than \$10,000 in unpaid wages and overtime, vacation and termination pay. Even in sectors where wages are very low, such as the garment industry, domestic work and food services, employers would be able to deny their employees their basic rights in every way they could, knowing that they would never have to pay more than \$10,000.

This bill also empowers the minister to set a minimum amount for employment standards claims through regulation. This would enable exploitative employers to keep their violations under the minimum amount for six months. Then they would get to keep the money and their employees would have no way of recovering it.

In this bill, it is also proposed that the collection of the moneys which investigations assess employers owe their employees be handed over to private sector collection agencies. If a private citizen does not pay their rent or the dentist, or fails to make payments on a purchase agreement, they very soon find themselves in the Small Claims Court and have their wages garnisheed. If anyone fails to pay their taxes, Revenue Canada has very prompt and effective ways of enforcing the law. If an employer fails to respect the law, however, and does not pay his debts after a government investigation into these violations of the law, there are hardly any sanctions.

Due to totally inadequate staffing and the low priority which has been accorded to those in the worst jobs, the Ministry of Labour has always been incredibly weak at collecting those unpaid wages. There are always very few staff assigned to this, and then in 1995, the government did away with the collection staff and added collections to the duties of the employment standards officers who already had far too much work. Now the current government wants to wash its hands completely of this. Bill 49 would privatize collections and give private collectors the authority to make settlements for less than the amount the employee is owed. The way the government envisages paying the collection agencies would encourage this.

The private collector would not collect any fee until an account was settled, so there would be an incentive to settle as quickly as possible in order to collect the fee. The same motivation would also lead to accounts which are difficult to collect being ignored. Essentially, all the government is doing in this measure is making employers, who will now have to pay both an administrative fee and a fee for the collector, and employees, who are now more likely to receive less than the full amount of unpaid wages, pay much greater costs than the government ever had to spend on its collection staff.

There is no evidence of the government's assertion that private collection agencies are more efficient or cost-effective than collections by its own staff. On the contrary, figures for the nine months — April to December, 1995 — show that for each dollar the government spent on its own collection service, it got \$6.30, while private collection agencies only raised \$3 for each dollar in expenses it charged the government. And a recent Management Board review found that the government's own collection agency was much more cost-effective than the three private agencies that the government used, both in 1994 and 1995.

The one and only motivation for all the changes proposed in Bill 49 appears to be the elimination of staff at the employment practices branch. It does nothing to prevent violations and encourage compliance.

These are our recommendations:

In order to maintain social cohesion in our society, it is essential that a proactive approach be taken to providing minimum working conditions which are livable and penalizing those who do not respect the law. This does not have to be at the public's expense. If strict penalties were imposed for violations, as with every other type of legislation, that would cover the cost of investigations and also discourage violations.

The minimum wage should be set at no less than the poverty level for a single person. That would mean increasing it by about \$1 an hour.

Hours of work should be no more than 40 hours a week, and overtime pay should be paid at the rate of time and a half for all hours in excess of the standard or time in lieu. This would help create jobs.

There should be a right to paid bereavement leave of three days for close family members and an automatic extension to one week with unpaid leave for those families who do not live on this continent. The same provisions apply to all workers under provincial jurisdiction.

There should be protection from dismissal, suspension, layoff, demotion or discipline because of any absence due to illness or injury.

There should be protection from arbitrary dismissal, including an obligation for the employer to provide written reasons for dismissal if the employee so requests.

There should be protection from sexual and personal harassment in the Employment Standards Act. The act should contain a definition of harassment, including sexual assault, verbal abuse and innuendo, and remedies such as damages, education and compliance procedures.

The employment practices branch should have a database to track employers who repeatedly violate the act.

There should be wide public education about employment standards. A summary of the standards should be posted in all workplaces in the main languages of the workforce of that workplace.

There should be routine spot audits, especially in industries where violations are common, and extended audits of companies about which there are complaints.

The two-year claims period should remain.

There should be no limit on the amount owed.

The current accessible process of the employment practices branch handling all the claims should be retained and should continue to do collections.

There should be a strict time limit on the processing of claims. The current time limit of two years leads to unacceptable delays in receiving the money they are owed for low-income people.

The employment practices branch should use the certificate procedure to enforce payment. The use of this procedure is discretionary, but seeing that so many violators don't pay at all or don't pay the full assessment, it should be a routine matter.

Those who violate the Employment Standards Act should be charged the full cost of the investigation of the complaint and the collection of the wages owed.

The Chair: Thank you. That's just over 12 minutes, so we have about one minute per caucus for questions. This time it will commence with the official opposition, Mr Lalonde.

Mr Lalonde: Thank you for your presentation. I have a few questions. Before I go to the questions, I would say that every employee or every person who works at the minimum wage should at the end of the year receive a bonus from the government, because today I don't know how a family can live on the revenue of just a little over \$14,000 a year.

You referred to the \$10,000 limit. I would say it's very rare that you would have a claim for over \$10,000, but if the government is getting claims of over \$10,000, it would mean that those people had been working and not receiving proper pay, or the employer had not recognized or not followed the employment standard.

What do you think about having the six months' claiming limit, the limitation period for a claim of six months?

Ms Hilary MacKenzie: We think having it limited to six months is quite unacceptable. It should be kept to at least the two years. It's very difficult for an employee to complain while they're still in their current employment,

because they can then be fired or intimidated. Therefore, if you limit it to six months, they probably haven't been getting quite a lot of the moneys they're entitled to over all the extent of their employment with that employer, but they would only be able to do anything about the six months prior to leaving that employment, because for low-income people, going to civil court isn't an option. You can't get legal aid now for employment-related cases, so anything owed prior to those six months they wouldn't be able to do anything about.

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Mr Lalonde: In your case, with the maximum limit of \$10,000, there will be very few complaints about the fact that the limit is \$10,000.

Ms MacKenzie: There have been a number of cases, and in very low-wage sectors. There was one in domestic work and there was one in the garment trade. They're not common, but they do exist.

Mr Christopherson: Thank you very much for your presentation. You may have heard the presenters just before you — the Ontario Mining Association. They contend that Bill 49 actually enhances employees' protection under the Employment Standards Act.

The government has shamelessly named this An Act to improve the Employment Standards Act, and you should know, on this the final day of our public hearings, which the government didn't want to have in the first place, that all across Ontario we've heard submissions, the majority of which were from the same perspective as yours, and not one government member has been prepared to come clean and admit that this is taking away rights. I'd just like you to take a moment to look at the government members and give them your best shot, in a very succinct fashion, to please understand that this is not about politics, that this is about the rights of the most vulnerable people in our society, because so far they're not coming out of their bunker on this issue and they're standing behind what is clearly a misleading title and a misleading argument. There they are.

The Chair: Thank you, Mr Christopherson. Moving to the government.

Mr Baird: Thank you very much for your presentation. We appreciate it. I noted that on pages 5 and 6 of your presentation you spoke about the collections process. This is an issue that's come up quite a bit. The experience of this government, and more importantly, the previous NDP government, is that the NDP found there was no correlation between how much resources were put into the collections and the result, that there were certain restrictions the government had on collecting: lack of expertise, lack of many of the resources that the private sector puts into collections.

You mention on page 5, for example, that there were always very few staff assigned to collections and that in 1995 the government did away with the collections branch. Actually that was done away with in 1993 by the NDP government. Mr Mackenzie, who was the minister then, who I think is very well regarded certainly around Queen's Park, did away with it because he felt the amount of resources his department put into collections didn't really yield a better result. I guess he was right, because in 1993 he was collecting 25 cents on the dollar,

and for the last two years we've been collecting 25 cents on the dollar. So despite having discharged 10 employees and closed down the collections branch, we're still bringing in what I think is an abysmal collections rate, and we're not satisfied with that. Our hope is that trying a different way will yield better results. Our goal has got to be 100%, there's no doubt about it.

The one terrible thing about collecting 25 cents on the dollar that is even bigger than the workers not getting the money they're entitled to is that it sends a message out to every other worker: "Don't bother complaining, don't bother coming forward, because even if you go through all the hoops — you find out about your rights, you approach the ministry, you file a claim, there's a full investigation, there's an order issued, the appeal period expires — even after you've jumped through all six of those hoops, there's still only a one-in-four chance you're going to get your money," which I think just sends a terrible message out. Our view is that the collection agencies would be able to improve that. As well, we'll have to look, a year or two years from now, to see what the results of that are and obviously be accountable for that. I think it will be better, and then we can try to find as many ways as possible to further augment that in the complete review.

Ms MacKenzie: We did look into this matter in quite a lot of detail. The example I've cited here, that's true, that's not the collections within the employment practices branch, that's the government's own collection agency, which I understand covered various things.

In the government's own collection department, covering various ministries, I understand, their collections are a lot more effective than private collections. You don't have any evidence that private collections will be more efficient. I think why it didn't work in the employment practices branch is that a very low priority was being given to everything there, absolutely everything, and there were very few people working on this. You need, first, the legal power to do it. The money should be collected in the same way that everything else is. If I don't pay my rent, there's a court order. As we said earlier, when it is assessed that an employee is owed something, a court order should be made at that point. It's not real, and employers know that they can get away with it.

Mr Baird: With the abysmal performance, though, of the provincial government over the last three governments, going to private collection agencies certainly couldn't be any worse than it is now. I think it can only be better, and obviously we'll be accountable for that. I think it will be better. There will obviously be people watching, and I'm sure that it will be better. It can't be any worse, that's for sure. It's certainly an honest attempt to try to do better.

Ms MacKenzie: But the way private collections work is they're paid a fee.

Mr Baird: By the deadbeat employer.

Ms MacKenzie: They're paid a fee, so their motivation is to settle quickly. The employees are paid by how much they collect, so nobody wants to go anywhere near the difficult-to-collect account.

Mr Baird: They'll make more money.

Ms MacKenzie: It doesn't have any relation to justice or the need.

The Chair: We've now passed 20 minutes, so thank you both for taking the time to make a presentation before us here today. We appreciate it.

With that, the committee stands recessed until 1 o'clock.

The committee recessed from 1156 to 1303.

MUSKOKA LEGAL CLINIC

The Chair: I declare the meeting to be reconvened. We welcome our first presenter of the afternoon, Muskoka Legal Clinic. Good afternoon and welcome to the committee. Just a reminder that we have 15 minutes for you to divide as you see fit between either presentation time or a question-and-answer period.

Ms Jo-Anne Boulding: Good afternoon. My name is Jo-Anne Boulding, and I'm a lawyer with the Muskoka Legal Clinic. The clinic serves the entire district municipality of Muskoka. We are located in Bracebridge and we also have a satellite office in Huntsville. As you are no doubt aware, we provide a variety of services, including summary legal advice and representation in the area of law called poverty law.

We have prepared written submissions on the changes proposed in Bill 49. Our experience is with non-unionized workers. Muskoka is a vacation area, and much of the work is seasonal and in the construction or service industry. Consequently, we have many small businesses or employers. We have both represented workers in their claims to the employment standards branch as well as referring them directly to the officers for assistance. Our experience has been that the branch is underresourced and basically acts as a collector of moneys owed.

Shorter complaint period and investigation period: Currently, a worker has up to two years to file a claim with the branch. Further, the worker can recover any money owed to him or her up to two years.

The reality of worklife, as clearly shown by the ministry's own statistics, is that workers file claims after they are no longer working with their employer. Bill 49 says workers will now have only six months to make a complaint, and the investigation will only look at the past six months of the employer's practices. Meanwhile, the Ministry of Labour has four years to get the employer to pay a worker.

With high unemployment, workers need the two-year complaint period. Many workers endure great hardships and violations of their basic rights in order to have a job. The two-year period is absolutely essential. The act is ineffective in protecting workers who lodge claims while they are still employed. Over 90% of the claims filed are done so after the worker has left his or her employment. Bill 49 forces workers to choose between their rights or a job.

It is unrealistic and not truly an alternative to require workers to enforce their claims beyond the six months or over \$10,000 in the courts. The new section makes the worker's choice between a complaint to the branch or to the courts exclusive. It also assumes that the worker knows the value of the complaint right from the beginning. This is often not the case.

This act is the only protection for workers. These changes are basically leaving workers at the mercy of their employers.

Access to justice for low-income workers is denied. Bill 49 tells workers to go to court instead of the Ministry of Labour. While the government claims that the purpose for this change is to eliminate duplication in legal proceedings, its effect will be to deny access to justice for workers. Essentially, Bill 49 will force workers who are owed more than six months' wages or more than \$10,000 to go to court. Ontario legal aid is not available for employment law matters. If workers are unaware of their legal options, either because they cannot afford a lawyer or were unable to get timely legal advice, and they do not withdraw their claim with the ministry within two weeks of filing it, they will be denied any redress through the courts. Under the current system, workers are entitled simultaneously to pursue their remedies under the act and any additional remedy in civil court.

Introducing private collection agencies to settle workers' claims: Bill 49 proposes to privatize the collection function of the Ministry of Labour's employment practices branch. Since the branch mainly functions as a collection agency, this is a major change. Nothing in Bill 49 addresses the problem of preventing violations. This is a major shortcoming of the proposed changes.

In 1994-95, out of the 9,468 assessments made against employers, 2,771 went uncollected. In dollars, that means \$47.8 million was not collected.

Private collectors are authorized to collect the money owing to the worker, the administrative charge imposed by the ministry, and their own fee and disbursements. When a private collector collects less money from the employer than the total owing, Bill 49 authorizes the collector to apportion it between the worker, the ministry and the collector in a prescribed manner. The prescribed manner is not indicated. The government is again abandoning workers. Will they now have to pay a collector in order to recover wages that they are owed? The violating employer should pay all costs associated with the order.

These provisions create an incentive for the private collector to compromise or settle with the employer who owes the money for less than the worker is legally entitled to. Workers will lose as collection agencies push for a quick settlement and payout. Vulnerable workers will be pushed to accept low offers.

The proposed changes to the act weaken enforcement of the standards. New limits on time and quantum of claim make a gift of the excess to the abusing employer. The new collectors can be expected to encourage workers to further compromise their claims by settling for a lesser amount.

There should be real sanctions for non-compliance with standards. If it costs the unethical employer to breach the standards, then he will stop. Bill 49 is a gift to employers who violate the act. It forces workers to choose between their jobs or their rights. Workers want their basic rights enforced effectively.

What is needed to improve the enforcement and administration of the act:

Prevention of violations: As I stated, nothing in the bill addresses the issues of violations. Unless a worker files

a complaint, there is virtually no way to detect whether employers are abiding by minimum standards. Thus there is little chance that employers who violate the act will be detected, and if they are, the costs are minimal. This creates an incentive for employers to violate the act. It is simply unfair to workers to not be able to enforce their minimum standards. It's also unfair to those employers who willingly abide by the act to compete with those employers who violate it.

1310

Recommendations:

Preventing violations of the act: education of both workers and employers of their rights and responsibilities; require posting of those rights and responsibilities in the workplace; shift the focus from collection to prevention; use individual claims to trigger audit of the employer's records; prosecute repeat offender employers; prosecute employers who fire workers who lodge claims, as reinstatement without a union is ineffective.

Improving enforcement and collections: keep the two-year filing and the two-year claim period in the act; tighten up the time limits available to the ministry to investigate, issue an order and initiate a prosecution; increase use of the certificate procedure to improve the collection of assessments against employers. Instead of a discretionary policy, the filing of certificates in court should be a routine matter of enforcement.

Employers who violate the legislation should pay the cost of collecting the money owed to the worker.

Institute a fee schedule based on the violation, the amount of money owed and the complexity of the matter. This can be done without turning the collection function over to private collection agencies, which are not directly accountable to public policy.

All settlements for less than the money owed to the worker should be scrutinized by the ministry and permitted only as a last resort to prevent tipping an employer into bankruptcy. There should be no maximum limit on the quantum of an officer's order.

If collection agencies are given the responsibility for collecting moneys owed to workers, their fees should not be deducted from the workers' share of the settlement.

It is our submission that the proposed changes do not assist workers in this province to have their minimum employment standards enforced. We would ask the committee to reject the bill and to hold public consultations with both employers, workers and their advocates so that the proper standards are in place, with violations by employers dealt with fairly and speedily by employment standards officers.

The Chair: Thank you. That allows us two minutes per caucus for questioning. This time the questioning will commence with the third party.

Mr Christopherson: Thank you for the presentation. We have heard from the government, a government that continues to hold a public position that this act is an improvement to the existing standards, and one of the lame arguments that they've been trotting out is that somehow the move from two years to six months is a benefit. This is a biggie for them. This is as about as good as they can do, and it just doesn't wash.

I gather you're — yes, you are — a barrister and solicitor. I'd like to hear your thoughts on the argument

that the ability to have a claim filed sooner rather than later is a greater benefit, since they like using those kind of comparisons, than the ability to go back two years. That's what they say, that by shortening the time period, it keeps the case fresh and the trail hot and all that stuff. They refuse to acknowledge the damage it does to people who are stuck in positions. Could you just comment on that for me?

Ms Boulding: Employers are required to keep fairly extensive records, so I fail to see how the two years or the six months changes the evidentiary value of what's needed to prove a case. All it does is cut off the time limit that an employee, who may not even be able to make a claim, is allowed to. The records have to be kept for five years for tax purposes and for two years for provincial record purposes, so the evidence is there. It needs to have a number of people in the offices doing the investigations.

Mr Christopherson: The government is next in the rotation of speaking and I hope they take you on, because you understand this sort of thing better than I, being a trained lawyer. And since they're so proud of that line of defence of this shameless act, I hope they're prepared right now to turn their attention to that issue with you. The parliamentary assistant to the minister is here and I'd really love to see him take you on on what you just suggested, because then maybe, in the dying moments of these hearings, we can get at the real truth. I want to thank you for coming forward today.

Mr Ouellette: Although Mr Christopherson attempts to lead our questioning in a certain direction, I will follow up with a couple of questions. You agree with the two-year period, then?

Ms Boulding: It isn't a two-year period that's proposed; it's a six-month period that's proposed.

Mr Ouellette: But you're agreeing to maintain it for two years.

Ms Boulding: I would like to see the two-year period maintained, yes.

Mr Ouellette: So you agree with the two-year period?

Ms Boulding: Yes, I would like to see it maintained.

Mr Ouellette: Do you agree, then, that the two-year period is a form of restriction, even if it is two years?

Ms Boulding: Is it a restriction of what?

Mr Ouellette: It's a time constraint.

Ms Boulding: Yes, it's a time limit, absolutely. I agree it's a time limit.

Mr Ouellette: You've already agreed with the two years, and you've also agreed that it's a restriction, so you thereby agree that there should be restrictions.

Ms Boulding: No, I've told you what I think. I think that the two-year period that's currently in the act should be maintained. If you're asking me, do I want to draft the act and have no time period, that would be my first choice. But I'm trying to deal with the realities of what's possible in the political process.

Mr Ouellette: But the position you've put forward is to maintain the two-year period. You didn't ask for an extension of it at all.

Ms Boulding: Yes, that's the position I'm putting forward.

Mr Ouellette: That's to follow up on Mr Christopherson's position.

We've had earlier presentations regarding seasonal work. You stated in your presentation that seasonal work is one of the main employers in this area. We've heard from other sectors that said this would really benefit, this legislation, in those areas. What's your position on that?

Ms Boulding: No, I don't agree with that.

Mr Ouellette: The belief was that a lot of summertime students and other areas that work, that try to get as many hours as they can, this would allow that flexibility to take place. You're saying that this wouldn't assist those individuals?

Ms Boulding: I've only been speaking about violations. I haven't addressed the issue of how many hours they can work in a week or in a summer. There may be students who wish to not have any minimum so that they can earn a great deal so they can afford to pay the increased costs of education in this day and age, but my position is that there should be a mandated number of hours a week, there should be mandated overtime after that position, and seasonal workers would benefit from those kinds —

Mr Ouellette: You think, then, we should limit the students' abilities to earn income to pay for those expenses later on in life?

Ms Boulding: I think that people deserve to have a fair living wage, and that includes overtime when you work more than a mandated number of hours in a week, yes.

Mr Lalonde: Thank you, Madam. One of my points was clarified when Mr Ouellette just asked you the question. I fully agree with you that the two-year period should stay there and also the two-year claim period in the act; two years to file and two years for the claim period. But in fact we're recommending in the act that it will go down to six months for the period to lodge a complaint, and also you'll be able to only go back six months to do the claim. The two-year period that the government is giving for the investigation is way, way too long, especially when you refer to the Muskoka area. I know it's a vacation area. The employers are going in there just for four, six or eight months, and then they disappear.

The 90% of claims that we have from people who are lodging their claims after they leave their jobs, really, I just can't see how we'll be able to increase or to come up with a better result at the present time. I really feel that as soon as you have a complaint it should be deposited at the Ministry of Labour, they should accept anonymous complaints and immediately the Ministry of Labour should start investigating, especially in this case. All the tourist areas are affected the same way. But would you agree that the two-year period for investigation and the two-year period after that, added to the two-year period for investigation, is way, way too long?

Ms Boulding: Yes, it is, it's extremely long, because it can take up to four years before it's over and you still may not have the employer that pays at the end of that time period.

Mr Lalonde: Especially when you have enough evidence, and very often when the complaint is lodged it's because you have something to back you up in your complaint that you're depositing.

The Chair: Thank you for taking the time to make a presentation before us here today.

1320

DAVID MILLER

The Chair: That takes us to our next presentation, Mr David Miller. Good afternoon. Welcome to the committee.

Mr David Miller: Thank you very much, Mr Chair. I'm the Metro councillor for Toronto for the area of High Park-Parkdale. Prior to getting elected in 1994, I was a barrister and solicitor, and a very large part of my practice was in the area of employment law. In both of those capacities, I have a great deal of knowledge with respect to the Employment Standards Act, both from a political point of view, representing an area where there are many people working near minimum wage who need its protection, and from the point of view of representing clients for many years. It's in both of those capacities that I'm making my submissions today.

I'm going to try, in the few minutes I have, to summarize some points in my brief. As they may be a little bit legalistic and perhaps dry, I want to say at the beginning that most of the changes proposed in this legislation, except for one or two housekeeping matters, are, in my view, completely wrong. The result of them, from a practical point of view, will be that the most vulnerable people, the people who really need the protection of the Employment Standards Act, will not be protected. I think that's abundantly clear. The second reason they're wrong is that this legislation has penalties for violating it; people can go to jail and have gone to jail, and companies can be severely fined when they violate it. The scheme that's proposed in this legislation is going to definitely result in an incentive for disreputable employers to break the act. I really don't believe this Legislature should be passing legislation that encourages lawbreaking.

In my brief I make a number of points, and the first one relates to the flexible standards. I understand from the minister's announcement that she intends to defer discussion of this until the act is fully reviewed. While I applaud that, I wish to say that the idea of having flexible standards itself makes no sense. A standard is a standard. If you apply it to another context which is not dissimilar, criminal law, you certainly don't have a flexible criminal law. There's no reason, from my point of view, why it's appropriate to say that something is a standard and then say it's not by making it flexible. I believe certain people have addressed that other than me.

The second issue I'd like to address is enforcement under a collective agreement. I make a number of points in my brief, but there are three I'd like to highlight today. The first point is that from a public policy point of view, requiring unions to enforce the Employment Standards Act on behalf of their members is going to result in different people having different rights. Some unions are larger and more powerful than others. Some are more successful at fighting grievances. The result will be that persons who are employed by an employer that has a small or weak union may not be able to have their rights

protected, despite being set out in law, whereas those who belong to a larger union will.

Given the labour law changes that you've made, there's certainly reason to believe that you would have an uneven and unfair application of the law. If you're going to have a law that sets out minimum standards, it should be enforced consistently across the board.

The second problem is that the decisions with respect to such matters will be made by arbitrators. These are private individuals who will make their own interpretations of the act, which will then be subject to appeal only by way of judicial review at Divisional Court — and I note that an earlier brief, I think from the Canadian Federation of Independent Business, pointed out that the standard for that is patently unreasonable — which means that you will have different interpretations of the same act by a number of arbitrators, and it will be very difficult to resolve those interpretations.

This is a very real problem, because one of the benefits of the Employment Standards Act is that it's simple. Employers know that they have to pay overtime after a certain number of hours, employers know that they have to pay one week's notice per year of service when they terminate somebody, plus severance if applicable. If you enter into a regime where arbitrators are going to make widely varying decisions on these matters, you will make it much less certain what the obligations under the act are. This will have a very real cost to employers, this will hurt employees and it will also be a cost to the government, because the provincial government will have to intervene in certain judicial review applications to ensure consistent interpretations of the act. That's a very real cost and a real problem.

My third point is that from strictly a legal process point of view it's much more effective to have an act such as this adjudicated by the same people, an expert tribunal. That's why, for example, in the labour relations field you have the Ontario Labour Relations Board and not courts. This is a well-established principle, and it hasn't varied under different political parties. When you remove adjudication from the expert tribunal, which in this case is the office of adjudication, and give it to people who are essentially private individuals, you are really abdicating the government's responsibility to ensure its law has a consistent meaning, and you're inviting problems. When you have the same people ruling on the same act, you get consistent interpretations; for the reasons I said a few minutes ago, that benefits employers, employees and the government.

The third issue I'd like to address is the enforcement provisions for non-unionized employees. My first comment is that you run into some of the same problems that I've just mentioned with respect to the interpretation of the act, because you will have courts interpreting the provisions of the act and it will take time for them to come up with consistent interpretations.

The second point, and this doesn't seem to have been brought out in the briefs I just read from the business side, is that there will be much more litigation, which is going to cost employers. If you take an example of somebody who's terminated, in the past if they had a substantial right to severance pay, in my experience,

people would simply accept their termination and severance pay, which under the act would now have to be paid in seven days, and wait to see if they got a new job. If they got a new job within the time period of the severance, there would never be a lawsuit. You are now forcing people to sue, by the six-month limitation period and by the \$10,000 limit. It's going to result in a vast expansion of litigation which may be needless and people need to do it to preserve their rights, and it will cost employers, it will cost employees and again will cost the government. The court system is already overburdened.

The third point is that these provisions requiring employees to sue don't seem to recognize that the principles of law with respect to wrongful dismissal are different than those with respect to terminations under the Employment Standards Act. You are going to get very bizarre court cases in which courts are required to determine whether a person has been wrongfully dismissed and then required to determine under the act whether there is wilful misconduct or some of the other enumerated heads. It's quite clear at law that those are very different things. It's been very useful to have a simple way of determining those issues under the Employment Standards Act, and combining them is going to create very real problems and some very bizarre jurisprudence.

The fourth point I'd like to make here is that the \$10,000 issue is going to create unfair and inconsistent enforcement with respect to employees at the same company. I experienced a number of cases where companies violated employees' Employment Standards Act rights, several employees at the same time. What will happen here is that if there are several employees who have the same violation and one is over \$10,000, that person will have to sue. They can't subpoena the Employment Standards Act officer as a witness, so you don't know if they'll have the same evidence, and you'll have a couple of employees whose rights may be enforced swiftly and others who are required to go to litigation. That simply doesn't make sense. One of the things it's going to do, again, is encourage employers to break the law because it's to their advantage, since they won't have to pay as much money.

The final area I'd like to address briefly is the use of private collectors. I think this is entirely wrongheaded, because the problem with the act is not the same problem private collection agencies usually deal with, which is people running up their credit cards and not being able to pay. The enforcement problems under the act arise from two things: bankrupt businesses — and your government has already severely limited the rights of employees to collect their termination and severance pay by the changes to the wage protection fund — and secondly, because there are not enough powers granted to the director under the act to obtain documentary evidence of who owes the business money; for example, they're essentially required to file an order in court, as a private litigant would, and then use court enforcement procedures which are very slow. If the act was amended to provide some special measures to allow them to seize business records, not to establish just the claim but to establish who owes the business money and where the bank accounts are and so forth, the enforcement problems could be fairly quickly remedied.

In conclusion, I strongly urge the committee to take all of these amendments and put them into a process in which the whole act is evaluated. There's no need to rush into these. It's hard to escape the conclusion that the need to rush is driven by fiscal targets and not by a coherent analysis of the act. There are many, many technical problems of the act which I haven't had time to go into and the larger problems dictate to me that these changes should not go ahead because they will harm, not just employees but the interests of employers, particularly employers who are fair and pay the amount due on time, because they will be in a worse position than those who choose to circumvent the act and are allowed to do it because the enforcement provisions have been weakened.

1330

The Chair: Thank you. That allows us just slightly over one minute per caucus for questioning. This time it will commence with the government.

Mr Baird: Thank you very much for your presentation. We appreciate the time you took to present it. On page 3 of your presentation, under subsection 2, "Enforcement Under a Collective Agreement," you write, "Employment standards are not something that are negotiated between parties," yet virtually every provision under the Employment Standards Act in a unionized environment, if not every one, would form part of a collective agreement. For example, the minimum wage. I would expect the vast, vast majority, approaching 99% of collective agreements, would have above the minimum wage. Could you tell me, as a union member, if I came forward if I wasn't being paid the minimum wage, for example, wasn't getting my vacation time, why wouldn't my union represent me?

Mr Miller: They may not have enough money. They may have a number of other grievances. There are numerous reasons why it may be impractical for a union to be able to represent every single employee who has a complaint about a breach of a standard. The point I'm making here is that these are standards, they're legislated standards, they're law, and government should enforce law. The parallel in the private sector would be saying to Eaton's: "You have to go enforce shoplifting. We're not going to enforce that criminal law any more. If you want a shoplifter prosecuted, you have to hire a private lawyer and bring him down to the court and prosecute the person."

Mr Baird: They do have to enforce it. They do have to have their own store security, though, because we don't have enough money to have —

Mr Miller: They do not have to have their own. They choose to have their own store security. That's an entirely different issue.

Mr Baird: Because the police won't provide the enforcement for them every day. They lose millions of dollars every week across the country so they have to have private security guards to watch their store merchandise because the police will not be there to enforce it on an hour-by-hour basis.

Mr Miller: Yes, but they do not have to go to court, hire their own lawyer to prosecute somebody who's alleged to be shoplifting. In essence, is it the same thing?

Employment standards aren't something that parties have negotiated and said, "I'm going to be paid this." This is a minimum set out by law because we recognize as a society we need these minimums.

Mr Lalonde: Once again, thank you for your presentation. You point out on page 3, "From a public policy point of view it is simply wrong to have rights under these standards be enforced by a private entity such as a trade union." I fully agree with you in this case because we will have two different interpretations. Even in court many times the lawyers have different interpretations. Even if you go to the Supreme Court you have different interpretations by the judges. In this case, do you think it's going to be fair for the people or the employees who will lodge a complaint that at times it could be on the same day that the Ministry of Labour could be holding some hearings or having some debate on complaints lodged that you would have one group represented by a union and the other group represented by the enforcement officer? Do you expect that at times there will be quite a difference of opinion?

Mr Miller: Yes, I agree with you completely. I think it's very unfair and will result in some employees not having their legal rights enforced from any practical point of view.

Mr Lalonde: Would you say that it would have been better off for the government to keep the enforcement officers and train them properly so they could handle all cases?

Mr Miller: And perhaps hire some more, yes.

Mr Christopherson: Thank you, councillor, for your presentation. I'm sure you'd be interested to know, since you just left the same place I did at noon, and for the benefit of others who weren't, there was an exercising of democratic rights to protest outside the Ministry of Labour at noon today, not unlike demonstrations we've had all across Ontario during these hearings. There was a large number of people there. Councillor Miller was there also lending his support, as he has here today at these hearings.

What you need to know is that since you and I left the protesters wanted to have a meeting with the minister because they don't believe that this committee is truly listening to the presenters, and that as a result, the word I have is that elevators were shut off, the police were called yet again, having to call in the police to protect this government from the people it governs, and already one person has been charged with trespass and the situation remains unresolved at this moment.

It's important that the record reflect the fact that the struggle continues on this issue. This is not a political process when we're talking about these kinds of minimum standards and the rights you're taking away, and this is what it has led to. Once again you've had to call in the police to hold off the very people you purport to represent as the government of the day.

The Chair: That takes us to 16 minutes, well past our time.

Mr Miller: Thank you, Mr Gilchrist.

The Chair: Thank you for making your presentation before us here today.

The Brampton Board of Trade has cancelled its appearance and next up would be the Toronto Musicians'

Association, Local 149, AFM. Are they in attendance? I don't suppose there's anybody from Ontario Public Service Employees Union Local 595 here yet, by any chance? Seeing neither, the committee will stand recessed for 10 minutes to allow the other group to arrive.

The committee recessed from 1336 to 1347.

TORONTO MUSICIANS' ASSOCIATION, LOCAL 149, AMERICAN FEDERATION OF MUSICIANS OF THE UNITED STATES AND CANADA

The Chair: I welcome the Toronto Musicians' Association, Local 149, AFM. Good afternoon and welcome to the committee.

Ms Marnie Niemi: Thank you. As you'll notice from the brief, which has probably been distributed to you at this point, I'm not Bobby Herriot. I'm about 80 years younger and I don't have a thick Scottish accent. I don't play the trumpet at the Old Mill, so you wouldn't have danced to the wonderful rhythms of my band. I am Marnie Niemi. I'm the field services coordinator at the Toronto Musicians' Association. So I'll obviously be changing the draft you have before you as I go along. The beauty of being a musician is that we learn to do it by ear, so I'll be doing that today.

Mr O'Toole: We'll keep on beat.

Ms Niemi: Keep on beat. That's right.

The Toronto Musicians' Association: We're a local chapter of the American Federation of Musicians of the United States and Canada, Local 149. Our membership of 4,000 professional musicians covers all types of musical employment imaginable, with a jurisdiction of Oakville in the west, Oshawa in the east and as far as Huntsville in the north.

I'm here today to express the grave concerns the TMA has with Bill 49. Although we are relatively new to the trade union and labour scene, we have been representing musicians in their workplace concerns for almost 100 years here in Toronto. "Being a musician myself" — this is the Bobby Herriot stuff — "you may have seen me perform at the Old Mill or the Royal York or on the CBC over the years." Myself, I'm an orchestral flute player, so you may have seen me perform with a variety of free-lance small orchestras around town or playing jazz flute in any of the smoky bars around town as well. No, I don't play the Swinging Shepherd Blues, if that's what you're wondering.

I feel that there's always a need for help when it comes to a musician enforcing their rights, either under a collective agreement or employment law. As I said, we're a rather small and specialized local here in the midst of so many well-known and powerful trade unions, but in North America Toronto is one of the five largest locals of the American Federation of Musicians. In fact, virtually all of the work done in Canada musically is done right here in Toronto. Our members work in every type of workplace imaginable, from the concert stage at Roy Thomson Hall to the opera or ballet pit at the O'Keefe Centre — soon to be Hummingbird Centre — the nightclubs on Queen Street West, the hotel piano bars, Phantom of the Opera, Beauty and the Beast, the CBC, in the recording studios, making film scores, TV

and radio jingles or platinum-selling pop recordings, just to name a few.

While you are no doubt fascinated with the work we do as professional musicians in this the third-best city for music theatre in the world — after New York and London, of course — you must be wondering, what do professional musicians need the current Employment Standards Act for? The answer is pure and simple: protection. Our agreements are as varied as the places we work. Some are long-term employment; others short-term. Some workplaces have commercial agreements; others collective. While most professional musicians are members of the Toronto Musicians' Association, not many are actually covered by collectively bargained agreements.

Since enforcement of any contract or law seems to be the most pressing of our concerns at the TMA, today I'll talk mostly about the impact on both the unionized and non-unionized workplaces for musicians of Bill 49.

First, unionized workplaces: Many of our long-term employers have master agreements with the TMA. This includes employers like the Toronto Symphony Orchestra, the National Ballet of Canada, the Canadian Opera Co, Mirvish Productions and Livent Inc. Great effort is spent in the negotiation of these contracts.

Since employment standards legislation provides for certain minimums, the TMA has never had to address these situations in either bargaining or their enforcement. As you know, the amendments in Bill 49 call upon trade unions to incorporate employment standards issues into the normal sphere of union representation. This places a small local like ours in a doubly difficult position.

First, we are constantly encountering difficulty with negotiations due to the cutbacks in government funding. As such, employer demands for decreased vacations, concerts for free and longer working hours are the norm. We have yet to see any proof that this current trend in bargaining, if attained, yields any increases in either ticket prices or artistic quality. These are already the strike issues that threaten Toronto's vibrant cultural identity. The implementation of Bill 49 would exacerbate any constructive efforts on the parts of the musicians and their employers to keep the music scene afloat.

Why? If TMA reps like myself, being one of two for the whole city of Toronto, were required to enforce employment standards provisions, I can assure you that there would be even less protection for musicians in this city than is the current level. Not only are we overwhelmed by the volume of current employer violations of negotiated agreements, but we have neither the training nor the time necessary to investigate a multitude of employment standards issues.

Bill 49 directs unionized employees to utilize grievance and arbitration provisions in collective agreements to resolve employment standards issues. The cost of arbitration, as some of you may know, is in the ballpark of \$2,000 a day. Frankly, this is money that the TMA and our cash-strapped, non-profit employers simply don't have. It would be most unfortunate if we were forced to take on employment standards issues and were ultimately unable to deliver with the representation that is required of us by law. Of course, I would be brought before the Ontario Labour Relations Board for a failure to represent

under the Labour Relations Act. Unions were created for the purpose of collective bargaining, not the active enforcement of every type of employment-related legislation.

How will Bill 49 impact on our bargaining processes? If the TMA were to have several claims against an employer for violations of employment standards during negotiations, it is entirely possible that the employer could make an agreement's settlement conditional upon our dropping the employment standards claims. This only reinforces potential abuse by the employer community. It's ridiculous to imagine that in this age of civilized industrial relations, if we refused to toss in an employment standards claim to settle a contract, we'd be out on a picket line. Once an employer can get away with these abuses, the minimum standards will then become maximums.

Second, non-unionized workplaces: This is where the majority of our membership is working. Although these musicians may hold membership in the American Federation of Musicians for a variety of reasons, collective bargaining is not usually their prime concern. These workplaces are usually quite small, using from only one musician up to 60, but often for a short period of time. Some musicians make use of AFM contracts to protect themselves, but most musicians are unable to convince their employers to sign these contracts. It is for these musicians that a publicly based system of enforcement and collection is vital.

Bill 49 gives the non-unionized musician the responsibility to solve employment standards issues by other means. These other means, as we well know in the music industry, are the civil courts. We all know how long a court case can take and the exorbitant legal fees one must incur. Employers will always have money to spend on lawyers and court costs. Is it fair to ask musicians, who are living from paycheque to paycheque just to make guitar and insurance payments and feed themselves, to launch a lawsuit against a club that has not paid them in weeks? Just as a matter of course, the average income for a musician in Toronto is under \$12,000 a year. That's the majority of our membership. When the total amount recoverable to non-unionized employees is \$10,000 and a five-piece band hasn't been paid in weeks, \$10,000 minus a collector's fee really doesn't amount to much.

This decision is made all the more difficult by the pressure to be hasty. For example, a musician may make a claim with the Ministry of Labour, knowing there's a ceiling of \$10,000 minus the collector's fee. That musician has only two weeks to decide whether they wish to pursue civil action. This is not nearly enough time to retain legal counsel, consult with them, obtain a legal opinion and then have the time to discuss the ramifications of either recourse with the relevant band members, their spouses etc.

Another difficult situation we have with non-unionized workplaces is similar to that case we heard about a few months ago of restaurant workers working for tips and not wages. Not to tell tales out of school, but there is a symphony orchestra here in Metro Toronto that puts on concerts in an illustrious concert hall, takes in ticket sales of \$25 a person and pays some professional musicians

nothing, all the while proclaiming to the concert-going public that they are a professional symphony orchestra.

Like the restaurant workers working for tips, these musicians play for free in return for a favour from management. They hope management will hire them for work outside this orchestra's concert season. Most disturbing of all is that they have to sit beside other professional musicians who are being paid. They may work with these other musicians in other orchestras and get paid for that work, but here they do not. Since there is no union contract, the musicians' only recourse is the Ministry of Labour employment standards branch.

All in all, the TMA feels that our rights as workers and musicians should not be made harder to obtain and that enforcement should remain in the capable hands of the Ministry of Labour. We've all grown up under common minimum standards. I implore you to maintain these minimum standards. Don't erode them or make them negotiable. Don't create a system of lax enforcement and collections that reinforces employer abuse of these minimums. The trade unions can't address every issue in the workplace. Please don't ask me personally to take on these additional issues and all of their subsequent liabilities.

I'd like to commend you on the proposals regarding the accrual of entitlement to vacation pay, seniority and service during pregnancy and parental leave. I think this is only fair.

In closing, on behalf of all of my fellow musicians, all 4,000 of us in Toronto, I ask the standing committee to consider this amendment very carefully. Do not sacrifice the overall standard of living and industrial relations system in Ontario for housekeeping purposes or deficit reduction.

Thank you for your time and I look forward to your questions.

Mr Lalonde: Thank you for your presentation. I'd just like to know, how many employees within the organization are working for minimum wage? What percentage?

Ms Niemi: It depends on the actual employer. There are music festivals that happen within our jurisdiction where the musicians are paid what is actually less than minimum wage.

Mr Lalonde: We know that being a musician is a tough business.

Ms Niemi: Yes, it is.

Mr Lalonde: Unless you become professional. You pointed out in a section that I highlighted here that employees will only have two weeks to decide whether or not they wish to pursue civil action.

Ms Niemi: That's my understanding.

Mr Lalonde: I fully agree with you that two weeks is not enough, because you have to consult a lawyer at times to see which way would be the best one to go, either to go through an enforcement officer or to go to the civil court. In this case you would see this extended; this two weeks should be at least 30 days.

1400

Ms Niemi: At least. Obviously our members, as I tried to point out, don't have a lot of financial resources and their ability to find legal counsel initially — it's not something that musicians deal with on a daily basis;

secondly is their ability to pay for that legal counsel. To my understanding, legal aid doesn't fund employment-related cases, so you'd have to have some means of paying for that legal counsel as well. It takes longer than two weeks to come up with some idea.

Mr Lalonde: Exactly, because you have to go to the right lawyers who are aware of the employment standards.

Ms Niemi: That's right.

Mr Christopherson: Thank you very much for your presentation. In the course of travelling across Ontario, we've heard from just about every wage-earning walk of life there is. In fact, yesterday we had an organization representing scientists and engineers who felt as threatened, for the same reasons, as you, and yet if you've had any chance to follow in the media what's been happening, the government still refuses to even admit this takes away anything, let alone the extent of the takeaway of rights that workers are about to lose. And you won't hear them admit it today if the rest of the time has been any indication.

The parliamentary assistant has been keenly interested in the issue of unions and representing the Employment Standards Act under the collective agreement. Maybe you could just expand again and enforce the argument as to why this is an unfair, unasked-for burden on your organization and how ultimately your members are going to potentially lose rights or the ability to enforce their rights as they now exist.

Ms Niemi: There's a couple of things. Obviously, as I said, unions were created for the purpose of collective bargaining. We're there to secure standards and working conditions above the minimums. If we are forced with the responsibility of pursuing every possible violation that occurs, beyond things that we've never had to think of — as I said, we're a small union. There's myself and one other colleague here representing 4,000 musicians in this city. Simply enforcing contract violations of an agreement that both parties have agreed to takes all of our time.

As such, I personally worry about the fact that musicians will come to me and say: "I played this music festival and I made \$300 and I was working nine hours a day and I was being billeted in someone's wealthy cottage in Muskoka. What are you going to do about it?" The difficulty for me is I have to look at all the other work that I have to do and say to the musician, "Is there some other way that you yourself can handle this?" The difficulty obviously is being brought up before the labour board for not representing them fairly, but it's a hard question of the simple economics of the situation.

Mr Ouellette: Thank you very much for your presentation. I know another organization that has similar problems. It's an organization of outdoor writers. What happens there when they are denied payment is they communicate through their organization to the other members and effectively shut down anybody from writing for those magazines or papers and that. Does your union not communicate, or can they not communicate, to the membership to effectively stop players from playing in a place, to stop customers from coming in, and shut them down?

Ms Niemi: Yes, there is that ability. Many types of unions have similar boycott mechanisms.

Mr Ouellette: Is that what your union does?

Ms Niemi: The AFM is very hesitant to pursue any sort of internal discipline or any type of boycott. If legislation is available to regulate employment relations between an employer and the employees, we'll do everything we can to facilitate that process, but we're not particularly interested in organizing boycotts.

Mr Ouellette: But in the same way that you had said to your membership that if there were some way they could take care of it, obviously the government has a function there to address the bad bosses but we can't — we would like to think we could be the be-all and end-all, but in cases where you have the ability to shut down an operation that is a bad boss, I think you should take the initiative to try and convey to your membership not to participate or support continuing the support of the bad boss.

Ms Niemi: Yes, there is that possibility. We do look at that. But the thing is, as I'm sure everyone here in this room has heard, there's not a lot of work out there. There really isn't a lot of work. So people don't want to put a strike on their employer as a collective effort, because it's something, at least it's a job, and there's a hope of some ongoing, continued employment there. If there's a legal way they can have an outside third party like the Ministry of Labour come in and say, "Look, folks, this is the situation; let's resolve it," we want to continue. We want to make sure our musicians are working well into the future. We're not interested in shutting the place down.

The Chair: Thank you very much for taking the time to make a presentation before us here.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION, LOCAL 595

The Chair: That leads us now to the Ontario Public Service Employees Union, Local 595. Good afternoon and welcome to the committee.

Mr Barry Weisleder: Good afternoon. My name is Barry Weisleder and I'm a member of the executive board of the Ontario Public Service Employees Union, representing 100,000 members across the province, including the Ministry of Labour workers charged with enforcement of the act that you are now reviewing, the same workforce this government is cutting to weaken enforcement of existing standards. I'm also president of Local 595, representing some 1,000 substitute teachers at the Toronto Board of Education, among the most poorly paid and insecure workers of the school system workforce, who need protection rather than further exposure to exploitative employer practices.

I come today to add my voice to the many who have demanded that Bill 49 be scrapped. We need stronger employment standards, not weaker ones. Bill 49 is an evil piece of work, an all-too-fitting companion piece to previous anti-worker legislation and a sign of what is to come if the government has its way. The majority on this Legislature committee know full well what you are doing. So does the Conservative government at Queen's Park, whose party name should reflect its true political direc-

tion, which is why I lovingly call them the Reform-a-Tories.

You are simply letting employers off the hook so they don't have to pay workers all that they are owed. You are forcing workers and unions to carry much of the burden for enforcement and costs. You are imposing new rules to set a very short time limit and restrict the amount of money that can be claimed when an employer breaks the law. You are abandoning government enforcement in favour of private for-profit collection agencies, which would shortchange many workers owed money by the employer. All this under the thin guise of housekeeping. If this be housekeeping, then this be a bawdy-house and House Madam Harris is prostituting the principles of public service and public good under very thin covers. You should be ashamed.

We take little solace from the fact that the government has backed off its proposals to allow employers to try to bargain standards that are well below legislated standards on hours of work, overtime pay, holidays, vacation and severance pay. This retreat shows that protest works, but it offers no serious relief to working people. The Reform-a-Tory regime states that this odious proposal will be part of a more substantial attack on labour legislation later this year.

Let's look at some specific provisions of Bill 49. Section 28 on privatization comes to mind. Obviously, OPSEU is very concerned when vital public service work, which we take pride in performing at cost for the people of Ontario, is contracted out to for-profit agencies, doubly so when that work defends the living standard of workers who suffer from illegal employment practices. This is the case with section 28 of Bill 49. We urge committee members to ask some hard questions about the gaps in accountability inherent in these amendments.

Public employees report through the deputy minister to you as legislators. The effectiveness of our work can be directly scrutinized, notwithstanding intended cuts of well over \$4 billion to the public service by 1998. Employment standards officers and their co-workers do not have a direct pecuniary interest in the percentage of an assessment for back wages collected from employers. In contrast, what incentive does a private operator have to make every effort to recoup the full rate of assessed wages owing to an employee?

Further, why are there only passing references in the new section 73.0.2(1) as to the conditions that the director can impose on private collectors on "reasonable fees and disbursements"? Why are there no provisions setting out sanctions for private operators who collect assessments through fraud or coercion? Why was it not evident to the drafters of Bill 49 that permission for private collectors to arrange compromise settlements in the new section 73.0.3 raises the likelihood of abuse and further exploitation of workers?

1410

These serious questions must be addressed. They are among the reasons why we label the provisions in Bill 49 to privatize collections as reckless. If more evidence is required, one need look no further than last year's study of the central collection services agency within Management Board. This review found that public service

functions have a much better rate of return than private collectors and a better cost-to-revenue ratio. Central collection services took in \$12 million for the provincial treasury last year.

The same review expressed concern about the cost of private sector agencies being used by the ministry. Fees were averaging 23%, and the tactics, language and practices of private collection agencies, including creaming more lucrative accounts, were found to be troublesome. We submit that many serious questions remain about privatized collections and that therefore the full review of the Employment Standards Act should precede any decisions about them.

OPSEU is fully aware of the weak rate of recovery of funds by the employment practices branch. Dedicated employment standards staff require many more resources to prevent violations in the first place, to conduct audits to seriously fine and prosecute lawbreakers, and to protect complainants from reprisals. Clearly, with 20,000 formal complaints a year and five times as many general inquiries, this is no time to lay off 400 ministry staff, over 10% of those working in enforcement. Professor Judy Fudge of Osgoode Hall Law School effectively described in her study of the ESA how the meagre resources put towards recovering funds on behalf of cheated workers contrasts markedly with the recent spending spree to recoup alleged welfare fraud.

Let's look at section 20. This section eliminates access by union members to the investigation and enforcement services of the Ministry of Labour. It compels anyone cheated by an unethical employer to grieve, with their union incurring the expense of private arbitration for protection of rights that fall under a public statute. As with the privatization of collections, we question amendments that put enforcement of a vital component of public legislation at the mercy of the private arbitration process. Should victims of crimes be obliged to pay the local crown attorney to prosecute the abuser, and should arbitrators be expected to have the investigative resources and expertise of the Ministry of Labour in adjudicating increasingly complex matters?

What about sections 19 and 21: access to enforcement, non-union? OPSEU is deeply troubled by the proposed act at these sections because they force non-unionized workers with complaints to make an either/or choice between access to the employment standards branch and a lengthy civil suit that few people can afford. Onerous time limits of just two weeks are also imposed on this unacceptable choice.

These new conditions on access to justice are exacerbated by a new maximum claim limit of \$10,000, with few exceptions, on recoverable moneys for back wages, vacation, severance and termination pay. Hundreds of awards are being made every year in excess of this new cap. It is only reasonable to expect that the most modestly paid workers in the province are also the least likely to be able to pay legal fees or withstand a very lengthy wait for a civil suit to be completed.

OPSEU members are workers drawn to public service. We frequently assist victims of rogue employers when they visit the legal clinic, social services and health care facilities that we staff. Based on this experience, we urge

you to safeguard open access to publicly funded ministry services where employment standards claims ought to be pursued without the imposition of a maximum.

Section 32: By replacing the existing two-year limit on claims for back pay with one of just six months, the drafters of Bill 49 fail to recognize the serious hardships that are bound to follow. Vulnerable workers naturally take a much longer time to feel safe enough once they have moved to a new job or to become well informed enough to assert their rights. It is inappropriate to impose legislation that radically diminishes such complainants' ability to recover moneys owed to them. This restriction is particularly worrisome when coupled with the other limitation period changes at section 32 in which prosecutions under the act may now take a total of four years.

Bill 49 is part of a reactionary pattern of anti-labour legislation which so far has included the right to scab; provisions making it harder for unions to organize and to fight to maintain and improve workplace rights; rollbacks of workers' compensation that will cut benefits to injured workers and coverage from any workplace injuries and make it much harder to appeal a decision; and the disbanding of the Workplace Health and Safety Agency, drastically cutting funds for one of the best health and safety education programs anywhere.

So we're dealing with a government which has abandoned any pretence of social responsibility and one which is catering to the corporate elite whose systematic tax avoidance created the provincial debt that some people are so preoccupied by.

Big business wealth and political prowess buys legislators, it buys laws and is supported by media hype to convince Ontarians that there is a deficit crisis. The only true deficit is a moral deficit, and it is exemplified by Bill 49.

I want to say, not just to this committee but particularly to the people who follow these hearings through the media coverage they attract from time to time, that Bill 49, its predecessor Bill 7 and all the billions of dollars of cuts to services, jobs and human rights are the reasons that labour and community groups are fighting back.

This is the reason why on October 25 Metropolitan Toronto will be shut down. We need to convey a message to this government that without justice there can be no peace, no business as usual. On October 25 trains, buses, streetcars and unionized cabs will come to a halt. Offices, factories and schools will be closed. Essential services like hospitals will be on skeleton staff. On Saturday, October 26, the biggest rally in Canadian history will overflow the front lawn of the Legislature. This is a protest against the evil that some have done and intend to do more of. It also forms a living picture of what Ontario will look like if laws like Bill 49 come into effect: a picture of paralysis.

We say to the government, you can't hide behind the rhetoric of workplace self-reliance and less red tape. Ontarians realize in growing numbers that Bill 49 and similar attacks on the rights of the majority represent a right-wing corporate agenda. You've faced four city-wide general strikes across Ontario. The biggest one is coming to Toronto on October 25, and if that doesn't persuade you to withdraw Bill 49 and reverse the cuts and reinstate

the 400 Ministry of Labour staff who handle the 20,000 formal labour standards complaints a year, and the 100,000 general inquiries, and if it doesn't cause you to rescind previous reactionary legislation, then we are headed for a province-wide general strike that will either bring this government to its senses or bring this government to its knees.

If you were on your knees you would be able to look the workers of Ontario straight in the eye, because that's where you've put us with your laws and your budgets. We don't intend to remain there, however. We are standing up for labour standards; we are standing up for health and safety; we are standing up for public service and jobs and quality living conditions; we are standing up for ourselves, our neighbours, our children and those who will follow them. We owe no less to Ontario and to its future. Bill 49 does not represent the future; it represents the past, a very ugly past of extreme exploitation of working people, total job insecurity, a corporate paradise of human and environmental abuse, all in the service of superprofits for a tiny minority of big owners. That's a road we do not intend to travel with this government or any other.

We'll see you on October 25 and we invite the people of Ontario to join us on that occasion. I'd be happy to take any questions, if you please.

Mr Christopherson: Thank you, Barry, for your presentation. I want to take you back to the issue of contracting out the collection services. You raised the idea of the easier cases, the more profitable ones being skimmed off the top and others left behind. Can you expand on that in terms of the types of cases that are not as likely to be pursued as heavily by an organization whose, rightfully, primary motivation is profit and not necessarily the recovery of the money?

Mr Weisleder: Where the sums may not be very sizeable, where there's not a lot in it for the collection agency, depending on what incentives the collection agency is given in terms of reward for performance, there could be a very serious lack of enthusiasm about carrying it out, and that means that a lot of workers, particularly in small workplaces, more often not organized workplaces, will be vulnerable and will suffer the abuse of being deemed to be right in the eyes of the law but not getting the compensation they're justly entitled to.

Mr Christopherson: The other question on this is, do you see any impediment whatsoever from your co-workers being trained to the same level of expertise that one might have in the private sector? Is there some particular makeup of persons who work in the public sector that would prevent them from acquiring those skills?

Mr Weisleder: In the public sector there are standards about training and ensuring that staff are equipped in a non-partisan way to carry out their duties. In the private sector I don't know that this bill even speaks to what the standards will be for training of those who are to carry out collections and enforcement. It's a wide-open field and a Pandora's box, I feel, that we're opening.

1420

Mr O'Toole: Thank you very much, Barry, for your presentation. I know the members of OPSEU are well familiar with the challenge of downsizing.

Mr Weisleder: We don't see it as a challenge. We see it as an assault.

Mr O'Toole: By the workers?

Mr Weisleder: The provincial government acting on behalf of its financial backers.

Mr O'Toole: The workers at OPSEU have the right to demonstrate, and Leah Casselman and the leadership have some tough decisions to make. That's really what this is all about. This whole thing is about change.

I guess there has been an ugly past, perhaps the last 10 years, of overspending and that kind of behaviour, irresponsible behaviour, I might add. I'm going to ask you a very simple question and I'm not sure if there's an appropriate correct answer. I'd just like your opinion; you're a thoughtful person. I'm making this up as I go along. Which would you prefer to see here: 50 people making \$22 an hour or 100 people making \$12 an hour, working?

Mr Weisleder: I'd like to see everyone making a living wage. I'd like to see free collective bargaining. I'd like to see a proper standard prevail in the province.

Mr O'Toole: What is that, though? What I am trying to find is the point of equilibrium. When there's an excess supply of, say, cars or furniture they have to put them on sale. It's a supply issue, really, in the broadest sense. I don't think we made that up.

Mr Weisleder: Let me answer your question with a question.

Mr O'Toole: What happens with equilibrium, though? The price falls, right?

Mr Weisleder: Magna Corp, which is headed by Frank Stronach, who makes in excess of \$4 million, \$5 million, \$6 million a year —

Mr O'Toole: Wayne Gretzky makes more. What's your point?

Mr Weisleder: — employs a lot of workers at just above minimum wage. We're looking at a model where there's more equity in society rather than less, less polarization rather than more, and this kind of legislation that your government is studying and considering is going to worsen that situation.

Mr O'Toole: I guess technically you're criticizing Frank Stronach for creating hundreds of thousands of jobs. Is that the argument you're making?

Mr Weisleder: I think labour is a source of wealth in society and that he has the pleasure of being able to take a lot of the wealth created by his workers for his own self, and not pay taxes, and your government does not see fit to impose taxes on wealthy firms, the big banks, the billion-dollar-earning banks. If you did, we wouldn't be discussing this legislation.

Mr O'Toole: Mr Christopherson this morning mentioned that the word "profit" is very acceptable. Do you agree with that?

Mr Weisleder: I think profit is acceptable if it flows to society.

Mr Lalonde: Gentlemen, according to Bill 49, if an employee wants to file a complaint or claim, he will have to deposit a grievance to your union.

Mr Weisleder: Yes, if it's a unionized workplace the union must file a grievance, and the individual no longer has recourse to go to the employment standards branch.

Mr Lalonde: On average, how much do you think it's going to cost the union to proceed with the investigation that will have to be taken?

Mr Weisleder: Undoubtedly this brings a whole range of complaints under the aegis of the union and the collective agreement, and we know that the average grievance taken to arbitration costs in excess of \$4,000 just for a one-day hearing, with representation from our side and sharing the cost of the chair of the board of arbitration. It's hard to estimate the total cost this will involve, but it's going to involve hundreds of thousands of dollars just for our organization to bear the burden of this additional responsibility.

Mr Lalonde: The fact that you will not have access to the enforcement officer, and having the number of employees you represent, are you going to have the staff in place to respond to all those grievances that will come to your union office?

Mr Weisleder: As you know, and as the previous questioner implied, we are having to restructure our organization. Because of the layoffs this government is imposing on the public service — we're already losing millions of dollars in revenue and we're dealing with that situation — it will be next to impossible to deal with this additional burden of responsibility with respect to representation through the grievance procedure that employees now have the right to pursue directly to the employment standards branch.

Mr Lalonde: Would you say it would have been better for all to go through an enforcement officer so they would have the same interpretation?

Mr Weisleder: Certainly.

Mr Baird: Mr Chair, I just have one quick question, if there's unanimous consent for me to ask it. Do you mind?

The Chair: I don't mind, Mr Baird.

Mr Baird: This has come up, and I mean this with the best of intentions: How many employment standards complaints would your local have put forward in the last year, the last two years? The issue of expense is one that's come up a number of times. Would you be able to provide that to us? I would be very interested to know how many employment standards complaints came from your local and how much that would cost your union.

Mr Weisleder: How many claims have been put forward or would be put forward?

Mr Baird: Have been put forward.

Mr Weisleder: To be frank, not very many, but I also came as a member of our provincial executive for the union, representing members in more than just one local. We're also concerned about the status of employees who belong not only to other unions but who have no union at all. I wouldn't want to mislead the committee to think that in our local, where we have about 400 people on the job every day, 900 on a roster to be called out when needed, there's a great volume of employment standards complaints from the local alone. But for the union as a whole, to which my members and the local pay dues to fund the overall operation, it will be a matter of great concern. That's why we bring our concerns to you.

The Chair: Thank you very much for taking the time to appear before us today.

ONTARIO COALITION FOR BETTER CHILD CARE

The Chair: That leads us now to the Ontario Coalition for Better Child Care, if they could come forward. Good afternoon. Welcome to the committee.

Ms Katheryne Schulz: Thank you. My name is Katheryne Schulz. I am the public education coordinator for the Ontario Coalition for Better Child Care.

The Ontario Coalition for Better Child Care is deeply concerned about the impact that Bill 49, the Employment Standards Improvement Act, will have on early childhood educators in the child care sector.

Child care in Ontario is a billion-dollar industry, employing over 20,000 full-time staff. Child care professionals are among the lowest-paid workers in Ontario, and 95% of our sector is non-unionized. Staff in child care centres rely on the basic protection provided under the Employment Standards Act to ensure that they are paid minimum wage for their work, that they are paid for hours worked and that they are given proper notice or severance pay when their employment ends.

Ontario's home child care providers, on the other hand, are not covered by the Employment Standards Act. Home child care agencies and the Ministry of Community and Social Services, through the Day Nurseries Act, set out the number of children cared for, the ages of the children, discipline methods, health and safety issues and the need for inspections of licensed providers. The agencies provide a contract, set wages, provide clients and do routine inspections. While the coalition absolutely supports the regulation of home child care settings and the support role of home child care agencies, we also believe home child care providers deserve at least the basic protection provided under the Employment Standards Act.

Changes to the Employment Standards Act, coupled with changes to child care funding and regulation, cause grave concern to the child care sector. In its July 21, 1995, economic statement the Ontario government signalled its intention to review the province's early childhood education and care programs. Since that time it has cancelled \$100 million in child care spending and taken a number of steps to reduce government involvement in the provision of child care services. These actions have had a major impact.

A survey of municipal children's services departments completed by the Ontario Coalition for Better Child Care in February 1996 indicates that 4,743 of the original 14,000 Jobs Ontario child care subsidies have been lost to date and another 3,600 will be eliminated by the end of this year, 19 child care programs have closed, 408 jobs have been lost, 12 regions have frozen their subsidy intake, 16 areas have increased user fees to subsidized families, and 12 community-based planning groups have lost their funding.

Over the past six months the provincial government has conducted a review of Ontario's child care system. The recommendations which were released last week, entitled Improving Ontario's Child Care System, confirm our coalition's predictions that the province intends to privatize and deregulate the child care sector.

The changes recommended in the child care review, combined with cuts to public funding for child care, will

mean massive job losses and changes in working conditions for child care staff. Unlike before the introduction of the wage grant, many staff now have 15 to 20 years in the field. Those who are laid off may not get proper notice or severance because the operator is either unable or unwilling to meet their obligations. Asking staff to choose between filing under the Employment Standards Act and civil action is unfair. Filing a civil suit is expensive, and in many cases staff would only risk the expense of a civil suit with a favourable ruling under the act.

With fewer employment opportunities, and deregulation devaluing the usefulness of her experience and degree, staff whose rights are being violated under the Employment Standards Act will be less likely to come forward or will wait longer to file a complaint. The proposal to reduce the amount of time an employee has to file her complaint from two years to six months will mean that many staff forgo their basic rights in favour of keeping their jobs.

1430

One of the child care review's recommendations is to replace wage grants for child care staff with a lower "stabilization" grant which will be spent at the operator's discretion. The elimination of wage competition in this sector will result in downward pressure on pay and working conditions. Coupled with for-profit sector expansion, we can expect an increase in the number of complaints from child care staff under the Employment Standards Act.

The Ontario Coalition for Better Child Care condemns this government's callous disregard for the safety and wellbeing of Ontario's children. Its current approach to child care policy sees child care as a business in competition for the disposable income parents have to spend on substitute care for their young children. The fact that quality of care for children is compromised, that basic health and safety standards are reduced and that our most vulnerable children lose access to developmental programs becomes incidental. Having cut early childhood educators' salaries, increased their workloads and made them redundant by replacing them with less-qualified workers, this government then moves to dismantle their last basic protection under the Employment Standards Act.

The Ontario Coalition for Better Child Care calls upon the province to make real improvements to the Employment Standards Act by making the following changes: (1) stronger enforcement; (2) no exemptions from the act; (3) a \$1 increase in the minimum wage; (4) overtime pay after an eight-hour day and a 40-hour workweek; (5) more protection for home workers and teleworkers; (6) equal pay for part-timers; (7) three weeks' vacation and more paid holidays; (8) paid breaks; (9) rights to sick leave and personal leave; and (10) just-cause protection.

I'll take questions now.

Mr Rollins: Thank you for your presentation. I have great concerns over some of the documentation that you have chosen to write down in these numbers, where there are some job losses that you predict.

Ms Schulz: We're not predicting job loss, sir; they've already taken place.

Mr Rollins: It's funny to listen to the numbers that Janet Ecker, who has just done a study in this, puts out.

This government has spent an extra \$600 million more on child care this year than any other —

Ms Schulz: Janet did not study the impact of the changes and the cuts she's already made. She went around the province and talked with some selected child care providers and child care experts. She did not, as the coalition did, call around to every municipal children's services department and ask them what losses they have in fact suffered. When she is asked how many subsidies have been lost, the only response she has is an aggregate number that she can't account for, sir.

Mr Rollins: We're still spending more on child care now this year than we ever have before and —

Ms Schulz: No, you're not sir. Actually —

The Chair: Order. This works much better when one person asks a question and the other person answers.

Mr Rollins: My point is made. Thank you.

Mr Lalonde: I have a few questions.

Ms Schulz: Can I just make a statement also?

The Chair: Perhaps in response to whatever Mr Lalonde asks.

Ms Schulz: Okay, thank you.

Mr Lalonde: Many of your educators are on staggered hours; they're not on regular hours. They could come in at 6 o'clock in the morning and then go back home at 11 and then come back at 2 o'clock.

Ms Schulz: We have some part-time, yes.

Mr Lalonde: I really think at the present time, knowing that educators in child care are among the lowest-paid employees in Ontario, there's a reason for it — because the people just can't afford at the present time the child care costs per day. It comes up to around \$40 a day per child in some instances. Being a former mayor, I know what it is.

The government is planning to pull out of the wage grant that was awarded to all the child care educators. If they do, you are going to be not among the lowest-paid but probably the lowest-paid employees in the province. The problem, though, arises that probably the standards are too high. If I look at the province of Quebec, it's one educator per eight children from the age of 15 months up to four or five years old. But in yours, is it 3 to 1 at times?

Ms Schulz: No. Actually, it depends on the age group of the child, so the 3 to 1 you are referring to is infant care. When you get into threes and fours, you're actually talking a ratio of 1 to 8, which they're now suggesting should move to 1 to 9 or 1 to 10, when in fact the average across the country, with the exception of Saskatchewan, is 1 to 8. All of those ratios that you're talking about and the standards that you're talking about are not standards that have been pulled out of a hat or been designed for child care staff's convenience. Those are minimum standards that the research shows are necessary for healthy child development.

The difficulty here is that when you start to pit wages and working conditions against regulations you're in a very circular situation because wages and working conditions are key predictors of quality of child care. It's the combination of well-paid, well-trained staff and regulations that produce quality care. You can't trade one or the other off against each other and expect to have the

same quality of care, which at this point is minimum in terms of research on child development.

Mr Lalonde: Within your organization, how many of them are public day care and private day care?

Ms Schulz: Our organization represents non-profit child care programs. Public child care programs are run by municipalities. For-profit child care programs are represented by the Association of Day Care Operators of Ontario.

Mr Lalonde: So you don't represent municipal day care?

Ms Schulz: We have a couple of municipal programs that are members, but the vast majority of our membership are non-profit child care programs, which incidentally provide the vast majority of child care in the province.

Mr Christopherson: Thank you, Katherine. I think you still had a couple of more blows that you wanted to lay upon the body politic of Mr Rollins, so I'll give you the chance to do that.

Ms Schulz: I just wanted to make the point that despite Ms Ecker's claims that this provincial government is spending more on child care than ever before, when Ms Ecker is talking about that she is not taking into account cuts to child care spending that were made between 1995 and 1996. She disregards those cuts, and they were \$100 million. She also adds in a \$200-million commitment that was announced in the budget, \$40 million a year over five years for child care, money which we have not seen a dime of. I would certainly be happy to recalculate my numbers, Mr Rollins, if you have a cheque for me today, but we haven't seen that money. We have no indication of when it's going to be spent or where. So we think it is somewhat unreasonable for this government to walk around talking about the amount of money it is spending when in fact it is spending less and we have no indication of where that money is going to come from or when.

Mr Christopherson: Great. I wanted to visit something that you mentioned earlier, and that is the relationship between the wages paid, the working conditions and the quality of care that's provided for children. In the past, up until now, we've talked pretty much about bad bosses in the commercial context, by and large, with some exceptions, but certainly not as it relates to children as directly. We've heard from some of the government members that a bad boss employer won't last long in business because it's not good business to be a bad employer etc, but it's all at the commercial level. In a case where we've got the real bad bosses, where we've got real bottom-feeder types no one would want in the business if they knew about them, what kind of possible care, or lack of, are we talking about in terms of the children of our province?

Ms Schulz: The important point to make is that before there was public funding for child care staff wages there was a large, appreciable difference between the wages that were being paid in the commercial sector and the wages that were being paid in the non-profit sector. Then we had what we call DOG, direct operating grants, which was money that went to both for-profit and non-profit operators and elevated people's wages to some degree.

Then we had WEG, wage enhancement grants, which went only to non-profit operators because it wasn't felt that subsidizing private operators' employment costs was an accountable way of spending public funding, so the non-profit sector rose again. Interestingly, so did the commercial sector, come up to meet that standard, even though it wasn't receiving the public funds to do it, and that was because it had to compete with the non-profit sector for trained, qualified staff.

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What we worry about at this point is that now that we're seeing that grant in the non-profit sector go, the squeeze is on for non-profit programs. They're going to be in the very difficult situation, as Mr Lalonde pointed out, between choosing higher parent fees in order to pay their costs or lower staff wages. So the squeeze is definitely on for them and the parent boards that run them. We are, of course, advising all of our members to make serious plans for what to do if they close so that they can honour employment standards if they are forced to shut down.

In the commercial sector what's going to happen is that this is the opportunity now to bring wages back to where they were pre-1989 — and even before that — bring them down as low as they can. This is their big incentive, and they're going to start to expand, so they're going to be the only game in town for employees looking for a job.

Mr Christopherson: What's the average wage right now?

Ms Schulz: It's about \$22,000.

The Chair: We've gone over time, unfortunately, but thank you much for making a presentation.

CANADIAN AUTO WORKERS, LOCAL 2213

The Chair: That takes us to our next presentation, Canadian Auto Workers, Local 2213. Good afternoon. Welcome to the committee.

Mr Pino Crognale: Good afternoon. The following submission is made on behalf of CAW Local 2213 in Mississauga and representing 45 concerned workers and members of this local, including myself. We are all full-time employees of Air Canada Vacations, a nationally recognized tour operator and wholesaler. The bulk of our workers are in the company's Mississauga office, with a smaller group located at Lester B. Pearson airport, in Terminal 2. For the last three years we've been involved in a very long and tough struggle with our company. Included in this struggle was a difficult organizing campaign, a half-hearted attempt by the company to negotiate a first collective agreement with us and, finally, a five-week strike in 1994 over the Christmas period.

It is ironic yet important to keep in mind that all during this time of struggle, even though the NDP was still in power and such labour laws as Bill 40 were in place, it seemed to us that the playing field should have been, at the very least, level. Sadly though, the opposite was true.

To complicate matters further, we now have the current government telling us essentially that workers have had it too good for too long and drastic changes are needed

to restore some sort of balance between workers and their employers. These changes will have a profound effect on the lives of working class people and their families. It strips away any sense of hope and security we had and could rely on, which brings us to Bill 49 and the negative impact we feel this bill will have on workers across Ontario.

Under flexible standards, prior to Bill 49 it was illegal for a collective agreement to have any provisions below the minimum standards set out in the Employment Standards Act. Bill 49 allows a collective agreement to override the legal minimum standards concerning issues such as severance pay, overtime, public holidays, hours of work and vacation pay if the contract confers greater rights when those matters are assessed together. Consequently, what this means is that employers will now have the ability to put on the bargaining table more issues which were formerly part of the minimum legislative standards. It will allow employers to roll back long-established fundamental entitlements such as hours of work, the minimum two weeks' vacation, severance pay and statutory holidays by comparing these takeaways to other, unrelated benefits which, together, can be argued to exceed the minimum standards.

The impact of these new bargaining demands by the employer will be especially felt in the bargaining units where employees do not have sufficient bargaining strength to resist employer demands. With these new pressures and demands being forced on to bargaining units, the inevitable will take place: an increase in labour disputes leading to strikes and lockouts. A strong argument can be made that there has already been an unusually high number of labour disputes in the province since the Conservatives were elected. Much of this can be attributed to the new sense of empowerment the corporations are feeling with, first, the gutting of Bill 40 and, now, the proposed changes to the Employment Standards Act.

Enforcement under a collective agreement: Currently, under the Employment Standards Act unionized employees have access to the considerable investigative and enforcement powers of the Ministry of Labour. The Bill 49 amendments eliminate recourse by unionized employees to this avenue and instead require all unionized workers to use the grievance procedure under the collective agreement to enforce their legal rights. Additionally, there would be a \$10,000 ceiling on all claims for violations of the Employment Standards Act, where currently there is no maximum, and a six-month time limit for filing claims; currently it stands at two years.

Under this bill, union members will not be allowed to use Ministry of Labour enforcement procedures. Instead, their unions would be required to bear the cost of complaints for violations of legislated minimum standards. This measure would prove too costly for almost any union, and furthermore, the reduced number of claims as a result of this would pave the way for layoffs of about 45 enforcement jobs in the Ministry of Labour. Our union is strongly opposed to these new measures and feels that the government should be kept in charge of enforcing employment standards for the workers and not their unions.

Enforcement for non-union employees: Bill 49 reduces the time for workers to file claims from two years to six months. The Ministry of Labour investigation will also only go back six months instead of two years. Workers know they may be fired if they complain to the ministry, so they will wait until they have moved on to new jobs before filing a claim. The six-month limit will force workers to choose between their rights and their jobs.

Bill 49 limits the amount a worker can claim through the Ministry of Labour to a maximum of \$10,000 and allows the minister to set a minimum claim amount as well. Even the poorest-paid workers, such as domestic workers and garment home workers, have had claims larger than \$10,000. Any minimum amount is a gift to employers, an amount they can legally rip off workers.

The use of private collectors: Proposed amendments to the act intend to privatize the collection function of the ministry. A fundamental problem with regard to the act for some time has been the failure to enforce standards. This is especially true with regard to collections because the most frequent reason for the ministry's failure to collect wages for a worker has simply been the employer's refusal to pay.

Instead of enforcing the act, the government would rather absolve itself from enforcing the act and farm out the problem to a private collection agency. These agencies can push for a quick and lower settlement in order to get their own fees sooner. Furthermore, the CAW is very concerned that employees, particularly the most vulnerable, will feel pressured to agree to settlements for less money than what is actually owed to them for reasons of expediency or getting less is better than nothing. We want the system of government enforcement maintained and even improved.

To conclude my brief, I'd like to say that in our own personal experience at work, despite only very modest gains achieved by our first collective agreement, things have definitely not improved. The lack of cooperation shown by the company thus far is both frustrating and counterproductive. One year from now, when our contract expires, and if Bill 49 as it stands becomes law, we are probably facing the prospect of accepting unfair and unreasonable demands by our company or a long and costly strike. The company could even simply lock us out on September 1 and not even bother to try to negotiate a fair collective agreement, when there really is no incentive or reason for them to do so. We truly hope this does not happen.

The CAW demands the minister either radically alter Bill 49 or withdraw it completely.

The Chair: Thank you very much. That allows us just over a minute and a half per caucus. We've been a little tolerant about exceeding the 15 minutes, and in deference to the groups that are scheduled to appear afterwards, I would ask members to respect the time constraints, all three parties. This round the questioning will commence with the official opposition.

Mr Lalonde: You might have mentioned at the beginning how many members you have. Did you mention that?

Mr Crognale: Yes; 45, approximately, who work at Air Canada Vacations who are represented by this local of the CAW.

Mr Lalonde: So 45 members?

Mr Crognale: Yes, 45.

Mr Lalonde: The average salary would be?

Mr Crognale: Gross annual, approximately anywhere from \$19,000 to \$21,000 gross.

Mr Lalonde: In the low range.

Mr Crognale: Yes, very.

Mr Lalonde: Do you feel it is discriminatory to have the union members having to deposit a grievance, because of the fact they are members of a union, instead of having the services of the enforcement officer whenever there's a claim?

Mr Crognale: Absolutely. It's an extra burden on the unions, very costly, if the grievance is not settled in the first two steps, to go to arbitration. To this point, we have filed quite a number of grievances since getting our first agreement last year. To my knowledge, perhaps one or two minor ones were solved in the first two steps with the company. The rest are going to arbitration. So it is very costly.

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Mr Lalonde: Are you going to be able to afford to have a person take over the enforcement officers' jobs to do the investigation?

Mr Crognale: For a bit maybe, but eventually, as this continues, it will become very costly. Our local is financially strapped.

Mr Lalonde: So in your opinion it should be all handled by government enforcement officers?

Mr Crognale: Absolutely.

Mr Christopherson: Thanks for your presentation. You talked about strikes. How do you feel about the idea that you might have to take your members or try to take them out on strike just to maintain current standards that are already in law?

Mr Crognale: It's very disheartening. It's a year from now that our contract will be up, and already the tension and the mood, the morale, is very low, and the prospects don't look good for us. Our Mississauga office is unionized, as well as our smaller Vancouver office. The Montreal office is not unionized. They tried to organize them. Basically, the company will transfer all calls and work to the Montreal office if we go on strike.

Mr Christopherson: So, contrary to what government backbenchers might think, it's going to be difficult to convince your members that they've got a strike they can win, given the current political, legislative climate that we're in.

Mr Crognale: Absolutely.

Mr Christopherson: Is it fair to say that if that happens, you're either going to go on strike and there's no guarantee you're going to win — again contrary to what some believe, that every time you go on strike you win; oftentimes you go on strike and you lose — or you would just avoid going on strike and have to accept something? Is it fair to say that in two rounds of bargaining you could begin to see two standards? They talk about this greater benefit, but at the end of the day if they keep trading them off in concessionary bargaining, after a few rounds of negotiations you could theoretically, and possibly realistically, see each standard one by one being traded off in negotiations and then lost to a further

round of concessions when it's not part of the comparison process. Is that possible too?

Mr Crognale: Yes, that's a fair analysis. Quite frankly, I can't see us, in our case, going any lower than what we've got in our first collective agreement; it's quite modest, and most first agreements are. But the way the company is treating us thus far, compared to what we've got, is disheartening.

The Chair: Thank you, Mr Christopherson. That's already two minutes and 10 seconds.

Mr O'Toole: Thank you very much, Pino. Did you have a written submission?

Mr Crognale: I did, but I didn't have enough copies.

Mr O'Toole: That's fine, because I'd heard it totally before, almost word for word, with the exception of yours, so I have it on record. I'm not sure where you actually got it. I'm not trying to be smart. It's almost word for word from a previous presentation, which is important to hear it over and over again.

I guess my point is this: Your industry — and no fault of yours and no fault of Mr Christopherson or of mine — the world of work is changing. I know people in the vacation or tourist business who operate from their home, and they are worldwide connected. I forget the system it's called. They log on to some kind of reservation system, and they operate from their home.

Do you think that the world of work in tourism and vacation packaging and that kind of thing and marketing is changing? Will we always have to go to the Mississauga office? I think that's prehistoric. I should be able to do it right from my office down here, log on and — I can now today, this very day. The world of work is changing; that's what we have to look at. It's not because of all of the previous labour legislation while you were negotiating your first contract and didn't have the support you needed at that time. How do you respond to that? This is the reality.

Mr Crognale: I'm not sure what your question is, Mr O'Toole.

Mr O'Toole: My question is — the world of work is changing, and in your specific field, the Vancouver office or the Montreal office or the home office, that's the reality, and that's not because of this government. We're trying to adjust legislation that's over 20 years old, that's rather ineffective, that doesn't address the changing nature of work itself.

Mr Crognale: Like I said, quite frankly, if we go any lower than what our collective agreement currently stands at, I just can't see the company, with their responses to us, while they've made \$120 million, coming from the manager's mouth at a recent meeting, \$120 million in gross annual profits they made last year —

Mr O'Toole: Air Canada Vacations?

Mr Crognale: Air Canada Vacations. We're a wholly owned subsidiary of Air Canada. They're doing quite well.

Mr O'Toole: You can log on the Web now and book a vacation.

Mr Crognale: That's too bad; it really is.

Mr O'Toole: I know it is, but that's the way it is.

Mr Crognale: Well, it doesn't have to be.

The Chair: Thank you very much for making a presentation before us here today. We appreciate it.

CANADIAN FEDERATION OF STUDENTS

The Chair: Which leads us now to the Canadian Federation of Students unions. Good afternoon. Welcome to the committee.

Ms Victoria Smallman: Thanks. Actually, that's the Canadian Federation of Students. We are a membership-driven organization, not an association-driven organization, just to clarify.

The Ontario component of the Canadian Federation of Students, that is CFS Ontario, represents over 110,000 college and university students at over 20 post-secondary institutions across Ontario. We're pleased to take this opportunity to respond to the proposed changes to the Employment Standards Act, particularly as these changes will affect students or workers who have recently graduated from a post-secondary institution.

Given the current crisis in youth unemployment, as well as the increasing pressure on students to find meaningful summer or part-time work so that they can continue to access education, these proposed changes are of particular concern to the federation, whose members are among the most vulnerable of workers.

Student employees are primarily part-time, seasonal or contract employees. Many work in the retail or service sectors, largely unorganized sectors, and therefore rarely have the protection of a collective agreement.

Now, we're not talking small numbers here. In 1994-95, 73% of undergraduate students at York University were working for pay during the academic term and worked an average of 23 hours per week. Interestingly enough, the number of full-time students working for pay during the academic term increased substantially between the years 1991 and 1994-95, by 11%. So I think that shows that people are needing to take on more part-time work in order to continue their education.

In 1990, 32% of students worked in the service industry, 21% in clerical positions and 22% in sales. These are all industries characterized by larger proportions of part-time, evening and weekend and/or low-wage work. Students were three times more likely to work in the service occupations than the overall employed population and twice as likely to work in sales occupations.

The largest proportion of students working in the service sector — this is in 1990 — worked as bartenders, serving personnel etc in the accommodation, food and beverage industries, generally minimum-wage jobs with low rates of unionization and unstable working conditions.

The Employment Standards Act, then, is the only protection available to many student employees, and it is vital that the legislation and its enforcement mechanisms meet the needs of these highly vulnerable and highly transitory workers.

Students are being hit from all sides at the moment. Last week, Ontario university students paid an additional 20% in tuition and college students paid an extra 15%. This is the largest tuition hike in the province's history. Unfortunately, youth and students have experienced, at the same time, incredibly high unemployment rates; 18% unemployment for youth in July. This is at a time when students need employment the most; that is the time

they're trying to earn money so that they can go back to school and cover such a massive increase in tuition.

Other costs associated with post-secondary education have also risen. Students are being charged a variety of user fees at our institutions for services as varied as library and computer use, health counselling and job placements. Add to this the stress of a full course load and at least one part-time job, and you'll see that most students don't have the time or the energy to deal with an unreasonable employer, not to mention find another job or deal with complicated complaint mechanisms or a legal challenge in the case that maybe they have wages owed to them.

The Canadian Federation of Students is extremely concerned about the ministry's proposal to "encourage the workplace parties to be more self-reliant in resolving disputes." We feel that the proposal will discourage students from resolving disputes; they simply can't afford to, in any sense of the word. We fear that students will either fail to seek compensation to which they are legally entitled or that they will be forced to stay in an unsatisfactory or abusive employment situation just because they don't have the time or the energy or the money to be able to deal with a lawsuit or anything like that.

The federation feels that the rules and mechanisms for forcing employers to comply with employment standards need to be enhanced, not deregulated or eliminated. Even under the current legislation, millions of dollars owed to Ontario workers go uncollected. The current mechanisms for ensuring that employers comply with employment standards are inadequate. If the government can't force employers to give employees their money, how can employees be expected to do so themselves?

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Students, who are often intimidated by employers and reluctant to stand up for their rights, are not likely to bring legal action against an employer who owes them money, either because they are unfamiliar with the system and unaware of their rights or because the costs and time associated with legal actions far outweigh the amount of money they are owed. Because many of the proposed changes force employees to pursue litigation, and because litigation is not an acceptable solution for students, Bill 49 will prohibit students from achieving resolution in conflicts with employers over wages.

Student workers, as vulnerable, transitory and frequently unorganized workers, need minimum standards and they need standards that will be strictly enforced by government. We are extremely concerned about the suggestion that unorganized workers negotiate minimum standards with their employers. Student workers are simply not in a position to be able to do this.

There is a huge power differential in the employer-employee relationship, particularly in the sectors where students are often employed. To be able to negotiate fairly, you need a level playing field. This does not exist in workplaces that have a high turnover of employees. Given the high student and youth unemployment rate, there is always somebody waiting in the wings to take over your job if you dare to stand up for your rights. Student employees simply do not have the power to be able to negotiate fair working conditions or fair standards

with their employers, and many employers understand this far too well.

Students at the moment have been put in a rather desperate position. As education becomes more expensive, students are forced to accept undesirable employment situations if they want to stay in school and avoid building up a huge debt load. Youth unemployment is at an unacceptably high level. Even recent graduates are forced to settle for so-called "McJobs" so that they can start paying back their student loans.

While stories about PhDs driving cabs may be apocryphal, I can tell you that there are many MAs and PhDs out there working as sales clerks, waiters, telemarketers and administrative assistants. I'm a graduate student myself, and in the two years I spent between degrees I worked as a hotel front desk clerk, waited tables and sold computer software by telephone. I certainly do not regret having worked these jobs, and I was fortunate enough to have had fairly good employers, although I will say that I did not receive any compensation or credit for proof-reading the manual for the software company's product.

This is a dilemma that many underemployed students or youth encounter. Your boss asks you to put your hard-earned skills to work on a project or a task unrelated to your duties — perhaps copywriting, editing or fixing a computer problem. Although you will not receive compensation, with the exception of the promise of possible promotion — which, in the experience of myself and many people that I know, will never come to fruition — you're happy to be using your brain and your education for once. Because of this and because this person is your boss and you can't really afford to be fired and risk defaulting on your loan, you take on the extra task.

Of course, these requests rarely stop at one, and soon you may find yourself the unofficial and unpaid copy editor, researcher, graphic designer or computer support person for the company. From the employer's perspective, nothing could be better. They get two employees for the price of one and can avoid the cost of having to pay a full-time editor, researcher, graphic designer or computer support person, or the even higher cost of contracting one out.

In addition, I think there are some areas that the act does not cover and that need to be looked at by the Ministry of Labour, where I'd like to see future legislation. So while I have the opportunity to have your ear, I'm going to talk about them.

Right now, the boundaries between education and training are becoming quite blurry and there is a real need for some regulations and standards for situations where students are performing work as part of their education: co-op programs or work placements, for example.

Some universities are developing courses in so-called applied psychology and applied humanities in which students are being asked to pay tuition for the privilege of performing work for the university such as research for a faculty member or running tutorials for lower level undergraduates. This is work that was previously done by unionized teaching or research assistants either at the graduate or undergraduate level. Having an opportunity to gain some experience that might help you in a future

job search is extremely valuable, but exploitation of student labour is not acceptable and we'd like to see some standards put in place for these work situations where it's unclear whether you are an employee or a student.

The current legislation, even without the proposed amendments, is far too dependent on employee complaints about employers who violate standards. We would like to see the government take a more proactive approach, beginning with more public education about employee standards, which may include the posting of a summary of the act in the workplace.

Students in particular need more mechanisms for preventing violations. Students are unlikely to file complaints against employers. The current reliance on the complaint mechanism does not prevent violations or enforce standards in workplaces where employees are ill-informed about their rights or too intimidated or too desperate for work to complain. The responsibility for ensuring that Ontario's workers are treated fairly should not rest solely on the shoulders of these workers. Government and employers have an equal investment in enforcing standards, and the ministry should be spending more time on developing incentives for employers to comply rather than ways to discourage employees from complaining.

I do know that several organizations have made recommendations for different types of mechanisms for this, so I'm not going to repeat what they say. I will, though, add that in addition to public education, routine audits or inspections of workplaces in sectors that are notorious for violations should be undertaken, and there should be more protection from retaliation for employees who choose to complain. These two, I think, are of most interest to student workers because of the working conditions and the sectors they are employed in.

I think I'll end there and see if you have any questions.

The Chair: Thank you. We have only about 40 seconds per caucus for questions, but if anyone has a brief question or comment, we'll start with Mr Christopherson.

Mr Christopherson: That really doesn't leave a lot of time. Given all the things that you've said, and given the fact that this government purports to always be worried about the future, I often wonder whose future it is they're worrying about and whose future they're taking care of. You represent an awful lot of young people who are going to be in that future. What are your peers feeling as they look down the next few years?

Ms Smallman: I think that pretty much there's a universal feeling of despair, desperation, frustration and anger. I think that is reflected in the fact that students don't often complain about bad working conditions because they're just struggling to survive. This is why they rely on standards like this. We don't see a lot of job creation; what we see are a lot of incentives for employers. But we also at the same time see a rising debt load. So we're sort of being hit from all sides and it is creating a rather desperate atmosphere among youth.

Mr O'Toole: Thank you very much, Victoria. I commend you for appearing here, and that shows that there's a lot of potential and optimism when I see

students like yourself willing to take grasp of their own life. That's really a new era. I have five children and I wish they were as aggressive as you are. That's the way it's going to be. For some reason, it's become that way in the world today — hard to say.

I'll just ask you a question on the tuition increases. I formed a group of students in my riding and asked them to submit a report to me about the impact of tuitions. Do you know what they said to me? They said: "It's ridiculous. The academic year at university is ridiculous: 12 to 15 hours a week, six months, when the four years could be compressed into three." That was submitted to the Ministry of Education. They have creative solutions to the past way of doing things. Do you think that we have to look at different ways of doing things in education, perhaps even in the world of work?

Ms Smallman: I think the reality is that many students are juggling work and education at the same time. I don't think the academic year could be shortened and still have it —

Mr O'Toole: It's six months.

Ms Smallman: It's eight months, actually.

Mr O'Toole: It's six months. Check it out.

Ms Smallman: Of actual class time, I suppose, but I don't think it could be shortened.

I think we do have to look at alternative sources of funding for education other than tuition, because given the fact that students can't find jobs even to support themselves right now with the existing costs, some creative solutions need to be looked at from all sides. But I don't see that coming from the Ministry of Education and I don't see that coming from the government in terms of job creation either.

Mr Lalonde: The average workweek hours for a student are, what, 23 hours?

Ms Smallman: The average? At York University last year, students worked an average of 23 hours a week.

Mr Lalonde: The minimum salary for under 18 is what?

Ms Smallman: The minimum salary? I don't know if you could really break it down. I'm sure it's under —

Mr Lalonde: Or the minimum wage?

Ms Smallman: The minimum wage for under 18? This wouldn't cover my members, because my members are all 18 and over.

Mr Lalonde: They will all be over 18?

Ms Smallman: Yes. But it's not substantial, no.

Mr Lalonde: I know it's less than \$6.85.

Ms Smallman: We are talking people who are earning less than \$7 an hour for the most part, right.

Mr Lalonde: What would you like to see as a minimum standard?

Ms Smallman: In terms of wages? I couldn't even hazard a guess at what a minimum wage should be. What I'm looking at more is sort of standards in terms of working conditions, job security and paid vacation, and enforcing standards for employers; for example, the restaurant that is forcing its workers to live solely on tips, that type of thing. Currently the minimum wage isn't being met by a lot of employers, so we do need to take a look at that. I think there are many students out there living under the poverty line, and this has to be looked at,

but I couldn't hazard at what the minimum wage should be.

The Chair: Thank you very much for making your presentation before us here this afternoon.

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JOE POLITO

The Chair: That takes us to our next presentation, Mr Joseph Polito. Good afternoon and welcome to the committee.

Mr Joe Polito: Good afternoon. My name is Joe Polito. The title of my presentation is "Bill 49, Who We Are and What We Value; The Employment Standards Act: Key to Economic Renewal." I want to thank you all for the opportunity to provide feedback to your commendable two-part initiative of revising the Employment Standards Act. I also want to commend you all on giving full attention to so many presenters who I know probably are repeating many arguments. I'll try to take a different tack. I also want to thank my MPP, Doug Ford, for his assistance, and MPP John Hastings, who was on a call-in show and returned my call after the show was over.

My presentation will focus on a few modest goals through changes in the ESA: to save billions of dollars for taxpayers annually; to increase profits by billions of dollars annually; to improve our international competitiveness; to reduce unemployment; to address the concerns of employment equity and affirmative action advocates; and to reduce provincial and municipal expenditures. More on that later.

I readily admit that I'm here as an advocate, but not for the right or the left or for the public sector or the private sector, for business or for government expenditures. I'm an advocate for society as a whole. Thus, one minute I would recommend that we lower taxes for business, and on the other hand I would recommend that we create more freedom for workers.

Sages tell us that our laws, particularly like this one, are a statement of who and what we are, so I'd like to use these 15 minutes to focus on that.

Our identity, I think, is strongly linked to the roots of the North American capitalistic miracle, the strongly principled people who left religious and political repression in Europe in search of freedom and opportunity to fulfil their potential. Scholars tell us that these people brought the religious work ethic to free enterprise. It was characterized by hard work, honesty, self-reliance, justice, mutual respect and all those other qualities we're all familiar with. This was a time when such business people were famous for sealing a business deal with a handshake. Their admirable business skills were only a part — a very important part — of a life which has been governed by spirituality and ideals, as with that classic Dickens character Ebenezer Scrooge after his memorable visit on Christmas Eve.

Spirituality and idealism are still abundant in Ontario. All the great religions are represented here and we have armies of citizens who are humanitarians, environmentalists, politicians, feminists, human rights activists, anti-racists, members of terrific charities and volunteer groups and so on. We will go to considerable expense to ensure

travel, building access and washroom services for the disabled even if such consideration might decrease our competitiveness.

Many of the fine Ontarians I've just described are in business. The vast majority of our business people appreciate an ESA which permits them to treat their employees fairly and humanely while competing efficiently. The ESA prevents less scrupulous employers from gaining an unfair competitive advantage by exploitative practices.

I think in sum we're a pretty darned good society and we should be proud.

What do we value? I think we all agree that a job is the best social program. It gives esteem, sustenance and dignity. It allows people to contribute to the wealth of the nation rather than depend on it.

Efficiency in the private sector and in the public sector benefits us all. Efficiency in the private sector is promoted through ensuring competition, and I think this bill would like to try to do that; hence our record exports and a disappearing balance-of-payments deficit that we've been experiencing the last few years.

Democracy with a mixed economy and a vibrant private sector is the best way to manage our resources, meet the needs of the people, improve the quality of life and provide a just and safe society. Red tape and waste can obstruct investment in a vibrant private sector. Conversely, legislation is necessary to set the standards for child labour, workplace conditions, health and safety, dismissal procedures, the length of the workweek, holidays and many other items, even if it affects our competitiveness. Our trading partners must improve exploitive working conditions, child labour and environment-threatening practices.

In part one, I'm suggesting here that we ensure that these housekeeping rules that you're looking at right now reflect who and what we are. I'd like them to ensure that we are not tempted to sacrifice our ideals in the name of some law-of-the-jungle version of business competition. I'd like them to ensure that we enforce the law with the same resolve which you are recently applying to truck safety.

Problems with the ESA: First, I think there is a problem with enforcement. Second, it permits rampant discrimination. The ESA has unintentionally created a caste system of workers — temporary workers, part-timers, contract workers, home workers etc — who can be treated differently from more conventional classes of employees. We are unmatched in the world at embracing diverse backgrounds, religions and philosophies from all parts of the world. However, there's a horrible blind spot, I think, in our current situation in our drive for equality and justice, and it exists in the Employment Standards Act.

Third, the act has not responded to a gradual increase of women in the employment participation rate. The impact on the family has been profound. Supermoms are up at 6 in the morning to make breakfast, ready the children. They drive them to day care by 8. They're at work by 9, pick up the child at 6, make dinner for 7. They have an hour of quality time, put them to bed. They do their chores. They go to bed and the cycle resumes the

next day. These women are reliving the life of the infamous coal-mining families. It's not right.

Coincidentally, this week's current newsstand issue of Business Week rates the best companies for their efforts to help employees combine work and families.

The fourth is the failure to recognize the impact of increased productivity on the job market. Scholars tell us that with breathtaking speed in this last century, we've progressed from having 50% of the workforce feeding the nation to 1%. The same process is being repeated over and over again. Our manufacturing jobs are actually going down. Energy production, roadbuilding, construction, you name it: We're getting more efficient at it. As Mr O'Toole said, it's a new world.

There's always been a concern that this process will lead to a shortage of work or overproduction and a strain on our environment. Scholars observe that these concerns have been largely overcome by expansion of endeavours. People today have jobs that produce goods and services which were previously undreamed of. However, it's paramount to understand that this expansion was only part of the solution. From 1800 to 1950, economic gains, social changes and legislation had reduced the workweek from 80 to 40 hours. The workweek has not been reduced since, perhaps because of some of the unintended results of some of our legislation and some of the payroll taxes that have been mentioned like UIC and CPP.

Fifth, there's been an inability to contribute to solving the crisis in youth employment. We have to do something for our children, our nieces, our nephews, our sons, our daughters etc. This young lady who just made a presentation is evidence of what a terrific group we have out there, and we've got to give them an opportunity.

The journalistic champion of free enterprise, the Economist, and perhaps the best magazine I could ever recommend, expressed some of these concerns recently. On the cover of its August 24-30 issue, it asked, "Why Work So Long?" In addition, though the article does not refer to it, there's a graph in it which reminds us that the average hours worked per year per employee in Japan has dropped from 2,100 to 1,900 in the last five years. Consequently, despite the protracted economic slump, Japan's unemployment rate has barely budged. If the hours did not decline 10%, it's conceivable that Japan's unemployment rate would have gone from 3% to 13%.

In our zeal to get Ontario back to work, we are vulnerable to several myths. Myth 1: payroll taxes are job killers. The fact is, they are high, but they're not that onerous. If 300,000 of the current 581,000 unemployed were hired and by some miracle all were earning enough to pay the maximum of about \$2,000 in UIC and CPP, it would only cost \$600 million. If each of those new workers, when they were unemployed, cost taxpayers half as much as some experts suggest, that would be a saving of \$6 billion. That's not a bad paycheck.

1520

Fact: The two great job killers have been a tight monetary policy and a failure to shorten the workweek. Incidentally, they're also the two great causes of debt growth in the last little while.

Myth 2: The economic stagnation of the last seven years was the result of an inability to compete. Our safety

net, payroll taxes and government services contribute significantly to this problem.

It's not true. The stagnation was the product of a restrictive monetary policy which killed domestic demand, raised the dollar to a business-crippling level and ruined many great business traditions, such as the Reichmanns, the Hermants of Imperial Optical, and Confederation Life. I'd recommend the book *Unnecessary Debts* for more clarification on the cause of stagnation.

Fact: If we're not competitive, why are we having an incredible boom in exports? We're enjoying a trade surplus of staggering proportions, and I might say that Ontario is leading that. In fact, it's so large that it may lead to the same kind of trade relations discord with the US which they've had with Japan recently.

Fact: Because of this monetary policy, governments were forced to spend much more money on the safety net, and their revenues were greatly reduced and this put us in a very serious fiscal bind.

Myth 3: Stimulating growth by assuming debt and risking inflation is the only way to reduce unemployment.

Again, from 1800 to 1950, we reduced the workweek from 80 to 40 hours.

Models for the Employment Standards Act: In Japan, I've referred to the fact that in the last five years they've dropped their average workload 10% for their employees, and it's not surprising. There's an emphasis on team effort in Japan versus our tradition of individuality. In their scheme of things, it makes no sense for a small percentage of the population to pay almost the entire cost of an economic slowdown, to lose their jobs, their homes, their cars and perhaps even their families, when everyone could share in the slowdown, almost painlessly, by reducing their hours.

Just very recently, several of the major banks have recognized the diversity of employment patterns that have developed and have taken steps to make the different categories of workers, part-time employees etc, eligible for benefits.

The province and many of the municipal governments are active in allowing employees the right to choose less work. They can take leaves, they can work part-time, they can job share etc.

A thumbnail sketch of the required changes that I would recommend:

First, I would enable workers to choose less work through provisions which permit job sharing, leaves, part-time work, refusing non-emergency overtime, substituting lieu time for overtime etc. This would have the net effect of reducing the amount of work done without imposing it. This is something we could do immediately. Just as it is important to unleash business, it is also important to unleash workers. It's important to take the collar off, to remove the employment straitjacket so people can reduce the workload if they wish.

We should also end the few overt and embarrassing sources of discrimination. It's a caste system. It is the equivalent of an apartheid system in the world of labour. It's an embarrassment.

Finally, we could reduce the workweek progressively from 44 to 36 hours. I would suggest here that we would classify the hours over 36 hours as overtime but retain

the current rule for qualifying for time and a half. We don't want to put more costs on business. In economic booms, employees could work more hours; in slumps, their hours would be reduced rather than suffer layoffs.

The cost savings — that's where you get to the good part: It is said by experts — I've tried to check it out as best I can — that we spend annually \$64 billion on the unemployed. Ontario's share of that is over \$22 billion. I've broken it down here, and I've checked these figures and they seem to be pretty accurate:

UIC is \$5.2 billion. Welfare is \$7 billion. Health is a little more difficult to determine, but I know there are a lot of people who are getting therapy and on drugs and seeing doctors because they're unemployed, they've lost their jobs and their families and so forth.

Crime: The suggestion was \$2 billion by the experts. I think it's a lot higher. In Japan, the unemployment rate has been lower for decades and their crime rate has been vastly lower, and those costs associated vastly lower.

Education: I just heard this young lady say people keep coming back to school. They're trying to get into the workforce. They're trying to get the skills. They keep coming back or they stay in longer. Sometimes it's a condition of welfare. This figure would far more than exceed — I'm sorry. Am I running out of time?

The Vice-Chair: You have about one and a half minutes to go.

Mr Polito: Savings to business — this is a better part: If we could get the UIC down, we could save over \$2 billion for the workforce in Ontario, and with very little extra cost to CPP.

It is said that if we cut down the workweek by 10%, there would only be a 5% increase in hiring. That translates into a 5% jump in productivity for business. That's a 5% reduction in the \$173-billion wage bill. That's an increase of almost \$9 billion in profits, which is over 25% of the current \$30 billion in Ontario. I think the business lobbyists are missing a real winner on that one.

Finally, I think it would really help to contribute to fulfilling the campaign promises that we witnessed in the last election: cutting waste without reducing services; reduce the number of abusers of social assistance; reduce taxes; create more jobs.

All the efforts to cut the waste, the duplication, top-heavy administration, to find more efficient ways, don't seem to be enough to meet the goals of the government.

We are hearing about people having terrible delays for operations, school boards closing and the kindergarten program and so forth. That is a reduction in service, and we all want to avoid those things. Reducing the workweek would do that for you.

In conclusion — I'll skip over to page 9: If you want to increase business profits dramatically, reduce the UIC payroll tax, reduce the unemployment rate dramatically, reduce provincial and municipal expenditures, reduce their debts, improve productivity and competitiveness, improve the quality of life for all citizens, address the desires about employment equity and affirmative action — because much of the concern I think about bias may actually be due to the horrible unemployment prospects of all new entries, regardless of their back-

ground — then use the Employment Standards Act to make a big change. You've already made a remarkable change in terms of our tax structure. You have very emphatically broken a 30-year-old tradition. Here's almost a 50-year-old tradition of keeping the workweek static, and it's unrealistic. It's ludicrous.

I've given my own questions and answers here, and I'll look at a couple of those questions.

Would you give 10% to 20% of your workweek for other people? Yes. I'm already doing that. This way, we would at least get leisure time in return. Much of the money we earn is transferred to some level of government to cover the income, welfare, health care, day care and housing needs of the unemployed. Somehow we've gotten ourselves in a ridiculous situation to give up leisure time to work for unemployed persons, who wish to work for themselves. It's absurd. In Japan, they're not doing that. I think we have something to learn from them.

What about people who wish to work more? I think —

The Vice-Chair: I do need to interrupt you.

Mr Polito: That's fine.

The Vice-Chair: We're now at about a minute and a half over and we're running behind anyway.

Mr Polito: I apologize.

The Vice-Chair: Thank you very much for coming today.

Mr Polito: I want to thank you all again and the best of luck in your endeavours.

ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE

The Vice-Chair: Could I please have a representative of the Ontario Sheet Metal Workers' and Roofers' Conference come forward. Good afternoon. For those present, would you please introduce yourself.

Mr Jerry Raso: My name is Jerry Raso. I am legal counsel for the Ontario Sheet Metal Workers' and Roofers' Conference.

On behalf of the Ontario Sheet Metal Workers' and Roofers' Conference, I'd like to thank this committee for giving us time to make submissions on Bill 49.

The Sheet Metal Workers' and Roofers' Conference represents approximately 10,000 workers in the province of Ontario. We represent both construction and non-construction workers in the industrial sector, and we're very glad to be able to make submissions on Bill 49.

I think a good starting point is today I read in the newspaper that the Premier made a speech in England this week where he talked about the quality of life in Ontario and how he is very proud of the high quality of life we have and it's very important. If the Premier is sincere about this, then the first thing he can do is withdraw 99% of Bill 49. This bill is not about improving the quality of life in Ontario; it's about reducing that for workers in this province.

There are two sections of the bill which should be kept and which we applaud. The first is clarifying entitlement to vacation pay, which makes it clear that it is to be based on 12 months of employment, whether or not the employment is active, and the second section is ensuring pregnancy or parental leave is included to determine

length of employment, length of service. Other than that, the rest of it should be withdrawn.

1530

Officially, this bill is called An Act to improve the Employment Standards Act, and we've heard the Ministry of Labour call it housekeeping; in fact, it is neither. The official name of this bill should be An Act to gut the Employment Standards Act, because that's what this is about. This government started that with Bill 7 when it attacked the employee wage protection fund by reducing the maximum you can claim from \$5,000 to \$2,000 and by removing termination and severance pay from the employee wage protection fund. That is an attack on the act. It does nothing to help workers when you are owed money by an employer and the most you can get is \$2,000, when this government reduces it from \$5,000, and this is a continuation of that. It is clear that it is nothing more than an attack on the act.

My first point is that this bill attacks and violates some very fundamental principles, which no one in this room can deny. The first principle is that in a civilized society there should be minimum standards which should not be violated. This bill violates that principle.

The second principle, and in a capitalist society: Contracts should not be broken, they should be honoured; that includes employment contracts. If an employer owes money to a worker, that contract should be honoured and that employer should have to pay, especially given that the contract involves time that has been spent by the worker, hours spent, and the contract is that you get paid for those hours worked. This act violates that.

The third principle is that if there is a right, there must be a remedy to enforce that right. The provisions in this act, which create a maximum of \$10,000, which create a minimum which can be set, which reduce time limits, which force people to choose between filing a complaint and taking an action in the courts, violate this principle, because all of those sections enforcing the act, helping workers find a remedy to their rights, are broken.

There are two other principles here. This act is fiscally irresponsible. By forcing workers to make claims in courts, it's going to increase court costs, and that's taxpayers' money that it's going to cost, and it's going to increase litigation for all parties. Employers are going to have to spend more money, employees are going to have to spend more money and the government is going to have to spend more money. There are a lot of drafting problems with this bill, problems that are going to create much litigation.

Another issue is in terms of construction. We specifically have two problems unique to us. This bill contradicts the act in terms of the employee wage protection fund. I'll get to that in a second. There's a catch-22, and it effectively excludes us from the employee wage protection fund. I don't think that was intentional; I think that was a drafting problem and it should be fixed. The other one is also a drafting problem. When it states that unions have to file a grievance instead of filing a complaint to the employment standards branch, it has excluded section 133 of the Labour Relations Act, which is our section, which gives us the right and which tells us to go to the labour board for our grievances, and that's not in there.

The first section, and I think the most important, is the provision in terms of contracting out of minimum standards when the contractual terms and conditions provide a greater right when assessed together. I'm aware that has been removed, but I'm also aware that the intention is to bring it back at some later point. It's our position that it should not be brought back. This is a vicious attack on the Employment Standards Act, and it is intentional to destroy or to remove the floor. What it's doing is it is bringing these minimum standards which we accept as the floor to the bargaining table. It is stating that this is no longer the floor.

The first thing it's going to do is cause a lot of litigation. There are a lot of drafting problems with this bill, and this whole concept of contracting out when assessed together it provides a greater right, as a lawyer, I can tell you I think that is an impossible principle to determine. How can you possibly take non-monetary factors, compare them with monetary factors and compare them with mixed factors and come up with some answer that this is greater? You cannot do that. It's not possible to do. What is going to happen is that all the parties are going to end up in the court system to try to determine what this bill means, and it's going to cost a lot of money to everyone.

The second point is that it is not going to improve labour-management relations, it's going to hurt them. The whole concept of the Employment Standards Act is that this is the floor. In labour relations, we negotiate to try to improve from the floor. This bill will remove the floor, and it will say that everything is open now. Now employers are going to go to the table and say, "You've had something for the past 35 years or whatever, but too bad, we want to take it away." That is not going to help labour-management relations whatsoever. It's simply going to lead to confrontation, and it's going to lead to strikes and strife. The rest of the world will know this, and that will not improve investment in Ontario.

Thirdly, if employers do succeed in lowering the floor and eliminating employment standards, what's going to happen is that it's going to breed resentment in workers. It's going to harm workplace relations. Anyone can tell you that unhappy workers are not productive workers. Also, if their standard of living is reduced, if their wages are lowered and if they are insecure workers, they are not going to spend, and that is going to hurt the economy because it's going to lower spending. So don't bring this section back.

My second point is that Bill 49 proposes to establish a maximum of \$10,000. This is shameful, and it's offensive. There is no legitimate reason whatsoever to put a claim of \$10,000 on an employment standards complaint. This will not benefit the Ministry of Labour whatsoever. This will not benefit workers. The only group that will benefit from this is unscrupulous employers, because this will tell them, "If you owe money, you don't have to pay them more than \$10,000, because they can't file a complaint to the employment standards branch." If they're poor and they can't get a legal aid certificate, because they can't now, they're not going to file a civil action in court either. So it's telling unscrupulous employers: "Don't pay, because we will not

help the worker. We will allow you to steal money from that worker."

One good example is the case of domestics. I know of a case where a domestic was working. She was told by her employer, "All you get is room and board." It turned out that they were violating the act. They paid less than the minimum wage. The money owed to her was about \$70,000. What is she going to do under this bill? She can't go to the employment standards branch, because you're going to put a ceiling of \$10,000, and she's not in a position to go to court. So you have told that employer, "You can rip off this woman, and we will help you do it."

The second point of this is that there will be workers who will file claims in court. What you're doing is you are overburdening a court system which is in a crisis state right now. The court systems do not need these types of cases. It makes no sense when you have a specialized agency such as the employment standards branch, which has the personnel, the skills and the training, and which is specialized in this area of law, to say: "You can't handle the claim, because it's for \$12,000. That person has to go to court." Why would you burden the court system for no logical reason whatsoever?

The other aspect of the bill which is offensive and again which violates the principle of where there's a right, there must be a remedy is the limitation period, reducing it from two years to six months. There's no logical reason for doing that either. There are a lot of reasons why people do not file claims. The two main ones are either they don't know about their rights, which is very common, or poor workers, vulnerable workers, are not in a position to file a complaint, they're afraid. By reducing the limitation period, you are just making this situation worse. It makes no sense when at the same time you're increasing the time limit to file an appeal from 15 to 45 days. That's hypocrisy.

The other aspect of the bill that's wrong is enforcement. For unionized employees, you're telling them that they can't go to the employment standards branch, they have to file a grievance. The people who wrote this bill obviously do not understand the relationship between grievance arbitration and government legislation.

There are a lot of technical problems with this. The first one I mentioned, and again I think it's an oversight, is that the act does not include arbitrators appointed under section 133 of the act or arbitrators appointed under sections 48 or 49 of the act. What are those people supposed to do? When they file a complaint with the board, the employment standards branch, they're going to say: "You've got a collective agreement. You have to file a grievance." When they file a grievance, the arbitrator is going to say: "I don't have jurisdiction over this grievance. This is not about the collective agreement, it's about the Employment Standards Act. You have to go back to the branch."

1540

What happens when the agreement differs from the act on issues such as time limits? What if the time limit in the collective agreement is less or more? Will an arbitrator be able to extend the six-month limitation? What happens when there's an issue of arbitration such as the

employer saying, "This worker is not covered by the collective agreement," or the employer says, "I'm not covered by the collective agreement"? What happens then? Another question is, where does an appeal go from the decision of the arbitrator? Does the employer or the employee go to the court system under judicial review or do they use the appeal structure of the act? None of these questions is clear under this act, and the result, again, is that there's going to be a lot of litigation, there's going to be a lot of time and money wasted in the court system and wasted by employers and employees answering these questions.

Finally on this area, it's wrong to deny unionized employees the right to file a complaint with a government agency over the violation of a public statute. We feel that's a discrimination under the Charter of Rights and Freedoms. There's no justifiable reason why any taxpayer should be denied access to a government agency or tribunal.

Another question is, is forcing or requiring private arbitrators to interpret a government act what this government really wants? Private arbitrators, when they interpret legislation, must be correct in their interpretation, meaning there's going to be a lot of judicial review or appeals of arbitrators' decisions and again a lot of time and money wasted.

Enforcement for non-unionized employees: forcing workers to choose between the court system or the employment standards branch, especially if they are owed more than \$10,000. You're requiring them to use the court system when the court system does not need this extra time and expense.

One area which I mentioned which is of particular concern to construction is the employee wage protection fund. This bill talks about having to choose between filing a complaint or going to the court system. The employee wage protection fund in the Employment Standards Act requires that construction workers do both. Before you can make a claim to the fund, you have to file a construction lien and a statement of claim, which is an action. The act says workers in construction can't do both, so that is denying us access to the employee wage protection fund. We're going to have to choose between the act or a statement of claim and a lien. The choice is going to have to be done very, very quickly because of the time limits imposed in this act. It's not right.

The other thing which hurts this government in terms of this is that under the act, when we do both now and we do a claim for lien, the money we recover from the wage protection fund, the government can then go after that employer to recover those funds. With the way this act is worded right now, that will not be possible for this government.

The Vice-Chair: Excuse me, Mr Raso, I don't mean to interrupt, but we've exceeded 15 minutes already, if you could just summarize the rest maybe in a half-minute.

Mr Raso: Okay, I'll sum up. People in the labour movement in Ontario frankly were not surprised by the attacks on the labour movement. We understand that this government hates unions and it hates the 35% of workers they represent, but this act also attacks non-unionized workers, in the ways we've just explained.

Early on in her term, the Minister of Labour said that she represents the other 65% of workers in Ontario who are not members of unions, that she has to look out for their interests. Yet what does this act do for non-unionized workers, and what does Bill 7 do? It reduces the maximum from \$5,000 to \$2,000; it eliminates termination and severance pay; it puts a maximum of \$10,000 that they can claim; it will impose a minimum; it will reduce the limitation period for non-unionized workers to file claims; it will force them to choose between the courts and the ministry, which is a catch-22 because if they go to the branch it's a maximum of \$10,000, and if they go to court it's a lot of time and money. It will force them to accept less than 100% of what they're owed. This seriously puts into question the Minister of Labour's credibility and integrity.

The Vice-Chair: Thanks very much for coming to present today.

Mr Baird: Madam Chair, I was wondering if I could ask the committee for a five-minute recess so I could consult with another member of the committee.

The Vice-Chair: All agreed? Agreed. The committee will recess for five minutes.

The committee recessed from 1546 to 1602.

The Chair: I call the committee hearing back to order and apologize for the delay. I would like to note for the record that we have a written brief that's been submitted by a gentleman from the Canadian Auto Workers, Local 1285, who was going to make a presentation this afternoon, but he elected to simply drop it off. I would commend that brief to all the members for their reading.

CANADIAN AUTO WORKERS, LOCAL 1980

The Chair: That leads us now to Canadian Auto Workers, Local 1980. Good afternoon and welcome to the committee.

Mr Ron Hendriks: Thank you very much. My name's Ron Hendriks. I am the president of CAW Local 1980 and I'll be presenting on its behalf. I'd also like to introduce Enno Tonn. He's our recording secretary. Monica Jain was not available to attend today.

I've been trying to reduce my workweek this week, but I had to stay up till 9 o'clock to put this brief together, so it's not working. We have some recommendations. I'd like to read what I have on the second page to the standing committee on resources development. This is an overview of what we are going to be recommending and should summarize our position on the bill.

First of all, I'd like to thank you for providing us with the opportunity to present our views on Bill 49 and the Employment Standards Act.

In the years that we have worked for our employers we have all been affected by the introduction of new technology, lean production, downsizing and increased work hours for those remaining. The corporations react by explaining that only with more of the same will they be able to compete in a global economy. This ideology pits worker against worker, country against country, standard against standard.

Yet in our early years we learned in public school that the growth of new technology would release each one of

us to a life of relative leisure to pursue our pastimes, interests and occupational goals. As a society, we would also be released from the chains of poverty, unemployment and the crime that goes along with both. A thriving middle class would evolve as the benefits of new technology were distributed as equally as possible.

How long will we have to wait for what appears to be an impossible dream? It seems that as long as technology remains the private property of the corporate employers there will be no sharing of productivity benefits to the workers who produce them. The promised life of leisure will be disproportionately allocated to the unemployed, who are not needed, and the wealthy, who own the means of production.

What is required is a redistribution of the available work to more fairly distribute not only the income but also the leisure created by increased productivity. Achieving a fair balance between work and leisure will be a major focus of our submission as we ask for a shorter workday, a shorter workweek and more paid vacation.

We would also like to address the issue of scarce public resources that has been indicated by the minister as one of the reasons for Bill 49 to begin with. The issue of scarce public resources is not one that is isolated to the Ministry of Labour but rather appears as a feature in many ministries and governments at the federal, provincial and municipal levels. The solution to the problem lies with balancing government budgets to ensure that the revenues collected meet the needs and provide the services the public demands.

Reducing government because of a financing shortfall is not the answer. It will not give us the level of protection necessary to protect the public from corporate violations of workers' rights. For example, a lumber company may claim trees are its most valuable resource and yet clear-cut every single one of them if left to its own global economy. Similarly, the multinational corporations will do the same to the human resources of the world without any regulation. This is the purpose of the Employment Standards Act.

It is our submission that the present level of protection has been inadequate largely due to financing shortfalls and inadequate staff. Shifting the responsibility for enforcement on to employees, their unions or, worst of all, the corporations is not a solution. We propose instead that the government eliminate deficit financing and tax those interests from which it now borrows. We propose increasing taxes to profitable corporations and the wealthy, and applying the provincial sales tax to the sale of shares, bonds, debentures, foreign currencies and miscellaneous financial instrument commodities.

Our submission includes a recommendation that the government become more involved in the administration of the act. To this end we ask that the government increase and collect the penalties and fines that should be applied for violations of the act. Any proposed action by the government to reduce, water down or otherwise erode any aspect of the act would be in opposition to this submission. Any changes which limit the options of employees in obtaining justice are opposed by this submission. Any limits to the claims workers can collect are opposed by this submission. Any attempt to privatize

any aspect of administration of the act, including private collection agencies, is opposed by this submission.

We ask that the standing committee mail us a copy of its recommendations when they become available. On behalf of Local 1980, I thank the committee for its attention in this matter.

Mr O'Toole: We've heard a number of presentations from the CAW. It's a very formidable union, well schooled and with very capable representation.

You mention on page 1 — and I'm not trying to be smart or confrontational; I'm really trying to find out where we find this balance you referred to. Are you saying that your membership wants a reduced workweek? I gather that's what you're saying.

Mr Hendriks: That's correct.

Mr O'Toole: With a commensurate loss in pay?

Mr Hendriks: This is an issue that would not be shared across the entire membership of our bargaining unit.

Mr O'Toole: I feel that, because I've heard other presentations on a 32-hour week, a 36-hour week, which may be the international solution. Don't you feel that everybody wants the dignity to work?

Mr Hendriks: That's correct.

Mr O'Toole: Don't you feel that all work has dignity whatever sector it's in, whether it's the trash industry or recycling or whatever? Don't you feel that all work has dignity?

Mr Hendriks: Yes.

Mr O'Toole: Shovelling on a farm, that kind of thing?

Mr Hendriks: I agree, yes.

Mr O'Toole: I guess the other thing is that idle time draws to mind that if all the days were playing holidays, then to play would be as tedious as to work. Do you know what I'm saying? Leisure time and time that people aren't employed or fully gainfully employed creates a kind of malaise. What do people do? You're implying that the benefits of a leisure society are something we should look forward to. I don't think it's worked. I personally think that if you look over the last 10 years the pursuit of free time has worsened the family situation, the individual's life, for the pursuit of materialism. That's basically the dilemma we're in. Everybody wants more and we're caught up in that.

I'll just draw one more thing to you. I'm rambling around here a bit. Do you think we should oppose change in automation? You often hear the term "Luddites," who opposed the Industrial Revolution. They tried to break all the machines.

Mr Hendriks: That's correct, yes. They broke all the machines.

1610

Mr O'Toole: Nobody believed Henry Ford when he thought that these would create hundreds of thousands of jobs in the auto sector 100 years ago. What are the jobs of the future?

Mr Hendriks: I'll refer to each one. The first one was an issue of, does my membership always agree with working less overtime? I'd like to point out that one of the problems and reasons for people working more overtime has a lot to do with job security. People who don't see themselves as having a very secure job work a

lot of overtime, whereas if you were in a job that was more secure you wouldn't feel the need to do it because there wouldn't be that urgency to try to get your time in now. This is what we see within our bargaining unit and one of the reasons a lot of them do work some overtime.

The second issue is as far as how leisure is spent, and my observation and the observation of a lot of very active people is that you require the time to deal with social justice issues; you need the time to become aware of the laws and your human rights and what governs society; you need the time to be active on the school board, to become a member of the board of trustees; and you just simply cannot be a socially active person when you're working 10 hours a day. You're seriously limited in the amount of community involvement that you can do. You may be able to be more financially secure, but the cost is that you're excluding yourself from participation in the community. Does that answer your question? It may be a fairly idealistic answer, and not everybody's going to feel the need to spend their time in this manner.

Mr O'Toole: A lot of people do, though.

Mr Christopherson: Thanks, Ron, for your presentation. Throughout the hearings across the province a number of the government backbenchers have had this notion that unions are all-powerful, particularly when they think — my interpretation is — of the auto workers, CUPE, the Steelworkers, UFCW and all the acknowledged larger, very effective unions. They believe that as soon as the union bosses come rolling into the negotiating room and slam down their demands the management starts quivering on the other side and signs as quickly as it can. Therefore, some of their questioning has been, "Why on earth would a bargaining committee, on behalf of their members, sign a collective agreement that has standards in there that are not in the best interests of their members?"

The reality, as I remember it back in my days with the CAW, is that in many cases you've got a really huge imbalance in place, and quite often during tough times, especially tough economic times like now, you're signing collective agreements that have concessions in them or have less than what you'd like, or you're having to go out on strike because the employer feels very strong and puffed up with a lot of strength, and with this government they're all becoming more emboldened. Do you see the potential in this ability to negotiate standards below the ESA where, first of all, unions might have to go on strike just to hold on to rights that they currently have in legislation? Is that a realistic possibility?

Mr Hendriks: For our particular union, I don't think the employer would do that — and I do know a lot of precedents within the CAW — but there are corporations that would table those demands. I think even more dangerous is when you have a large degree of unemployment and a lot of insecurity, as we presently do, or more than we used to. People don't really want to go on strike, it's not something that they really want to put their families through and they're going to have to really think about whether or not they're going to accept the lower standard before they do. My fear is that some will take it.

Mr Christopherson: Do you think that there's any real, practical way of trying to compare monetary and

non-monetary rights as contained in the Employment Standards Act and say, "There's a package that is of greater benefit"? Do you think there's a practical way of doing that, which is what the government seems to feel can be done?

Mr Hendriks: I don't think there's really a way that you can compare them. In any event, the arbitrators are only able to really award monetary things, to a large degree. The types of things that you might order a corporation to do as an officer working within the ministry would not be in the same way shifted to the arbitrator. In other words, in the Employment Standards Act there are certain things that they can award, and an arbitrator can only award certain things. They have limits in their powers; they aren't the same. In the same way an officer under the Employment Standards Act has greater access to information and can ask for certain documents, myself as, say, chief steward would not have the same access to those documents. To shift the responsibility on to me to take up an Employment Standards Act claim immediately puts the victim at a disadvantage in trying to put the case together. They don't have the same power.

The Chair: Thank you very much for appearing before this afternoon and making a presentation. We appreciate it.

FEDERATION OF WOMEN TEACHERS' ASSOCIATIONS OF ONTARIO

The Chair: Now to the Federation of Women Teachers' Associations of Ontario, if they could come forward. Good afternoon. Welcome to the committee.

Ms Margaret Gee: Good afternoon. My name is Margaret Gee. I'm the president of the Federation of Women Teachers' Associations of Ontario. I'll just make some introductory remarks and then my colleague, Carol Zavitz, who has written the brief, will talk in much more detail. I also have with me Marilyn Roycroft, whom many of you know as our media representative.

The federation represents 41,000 women who work as teachers in the public elementary schools in this province. As teachers, our members are not covered by the Employment Standards Act, as you know. The provisions there relating to hours of work, minimum wage, pay for overtime work, public holidays and vacation do not apply. Teachers' working conditions are governed by other laws and by our own collective agreements. Nevertheless we are extremely concerned about how the proposed changes to the Employment Standards Act will affect the lives of most other working people in Ontario: many of our spouses, our children and families, our co-workers in the schools and the parents and families of the children we teach every day.

Bill 49 will make it much easier for employers to exploit and abuse their employees with impunity. For non-unionized workers, the Employment Standards Act is the only protection against unscrupulous employers. The protection provided by the act is naturally most important to the most vulnerable workers, and these include many women working in the garment industry and service industries, and domestics.

By weakening, and we do believe weakening, the Employment Standards Act, the government is once again

attacking the most vulnerable members of our society. Bill 49, if passed, will escalate the insecurity in employment, vulnerability to abuse by employers, poverty, disfranchisement, despair and rage of Ontario citizens. This initiative is squarely on the government's agenda of eliminating and privatizing government services and handing employers increased powers vis-à-vis their employees. Bill 49 will turn the Employment Standards Act against the very people it was designed to protect. Calling these changes "housekeeping" is a serious misrepresentation of the intent and effects of Bill 49. We find it insulting to all of us, and I'm referring to our 41,000 members. We call on the government to strengthen the Employment Standards Act, not to weaken it.

Ms Carol Zavitz: We have three main areas of concern. The first is with the enforcement of the act if Bill 49 passes. We think that enforcement of legislation should be public, but Bill 49 privatizes areas of enforcement and leaves it up to individuals working in unorganized workplaces and to unions in organized settings to compel employers to meet their legal obligations. Bill 49 would force many individuals to pay for enforcing basic rights.

Bill 49 severely limits an individual's access to public enforcement through Ministry of Labour claims. By filing a claim, an individual would lose her right to take her employer to court as well and to pursue there any rights under common law that are greater than the statutory minimum. Similarly, somebody opting to take court action can't file an employment standards claim for benefits to which the act clearly entitles her. An employee who successfully enforces her rights under the new act would receive only the bare minimum or, after waiting a long time and spending a lot of money, her full legal entitlement.

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The enormous expense involved in taking action through the courts simply rules that out for many people, particularly since legal aid no longer covers employment-related cases. However, Bill 49 would make court action the only option available for anyone with a claim longer than six months or over \$10,000 or under an undisclosed minimum amount.

Another way in which Bill 49 proposes to privatize enforcement of this act is by forcing unions to pay for enforcing the standards they haven't negotiated. If Bill 49 passes, unionized workers would have no access to public enforcement through the Ministry of Labour or through the court system. They would have only one avenue for enforcing the act: the grievance and arbitration provisions contained in their collective agreements.

Arbitration is really effective in enforcing a negotiated agreement. It should not be used to enforce legislation. In the first place, involving lawyers and arbitrators in the enforcement of employment standards increases the cost of enforcement compared to ministry procedures. These increased costs would be borne by unions and by employers.

The other really serious problem affects only the labour side: unions and organized working people. Unions, under this bill, would face greatly increased

liability. Once unions have to start enforcing the act as well by grievance, their caseloads would skyrocket and decisions would have to be made about which cases could go forward. Deciding to enforce a certain minimum standard here might mean a union couldn't enforce a clause of a collective agreement there or vice versa. In either case, a union member who disagreed with a particular decision could complain of unfair representation, and the union would face yet another legal proceeding to defend its decisions.

The third way in which employment standards enforcement will be privatized is by contracting out the work of collecting the money owed to workers by employers. This is a simple gift to business. It eliminates more public sector jobs and has serious implications for other workers. We predict that collection agencies will be more interested in protecting their own profits than in collecting the full amount owing to a worker if collection is the least bit difficult. In practice, we believe workers will face enormous pressures from collection agencies to settle for less than their employers owe them.

Our second major area of concern involves the limitations imposed on processes, decision-making periods and amounts recoverable under the act. Under Bill 49, workers have less time to file a claim, employers have more time to appeal an order and the government retains a very long time line for carrying out its obligations.

Any worker knows that she'll probably be fired for filing an employment standards claim. There is no effective protection against employer reprisals. A worker will usually try to keep her job even if her boss is violating the Employment Standards Act and will file a claim only when she's fired or gets another job or can't stand it any more and quits. Imposing a six-month limitation for a worker to file a complaint means that someone who hangs on to her job for longer than six months couldn't recover all her pay or benefits through a claims process. She would be forced to choose between her job or her rights unless she knew she could afford to hire a lawyer later on in the piece to enforce her rights. But we're talking mostly here about non-unionized, minimum-wage workers who have already been cheated out of wages or benefits. How likely is it that people in such circumstances could afford to pursue their rights in court?

The proposed \$10,000 max for employment standards claims puts a worker in the same kind of no-win situation: either to claim only part of what she's owed through the ministry or hire a lawyer to get the whole amount through the courts.

Bill 49 also allows the government to create a minimum claim amount. Imposing such a limit in regulations rather than going through a public process will make it very hard for anybody to know what their enforceable rights really are. If a minimum claim is established, those employees who are owed the least amount of money will have no option but to go to court to get it back. This is tantamount to telling employers that they can withhold any amount of money under the minimum with total impunity since few workers will see the point in pursuing a claim that will be all eaten up by legal costs.

Anyone whose claim is for more than six months or more than \$10,000 or less than some undisclosed mini-

mum will, then, be denied access to government services to force their employers to pay up. They will be obliged to use the courts if they can afford it. This is unlikely, and employers know that.

However, people who can afford to enforce their rights through the courts would be using an already overburdened justice system, which is also publicly funded. Court proceedings don't cost less than claims processes. Diverting a big portion of Employment Standards Act enforcement to the courts is a foolish use of court time and of public resources.

Viewed from this perspective, it becomes clear that the primary purpose of Bill 49 is to discourage workers from enforcing their rights in full and to protect employers from having to live up to their legal responsibilities.

Our third area of concern is with the part of the plan that's been postponed, that part that would allow employers and unions to negotiate provisions that violate minimum standards if the negotiated package as a whole provides greater rights or benefits than the act. This approach is totally inconsistent and incompatible with the whole idea of minimum employment standards. We're glad the government has withdrawn the proposal and hope it never resurfaces, for reasons outlined in our brief, which you have.

This provision would have created massive uncertainty and spawned a whole industry of interpretive litigation. It would have been another intrusion in a labour relations climate already more volatile, confrontational and biased towards the employer as a result of last year's amendments to the Labour Relations Act. This change also would have convinced many employers who have so far been able to operate within their legislated minimum obligations to pressure employees to give up conditions that we have seen as basic in Ontario for decades now.

Before I make my concluding remarks, I want to make it clear that there is one part of Bill 49 which we support: the changes clarifying that employees are entitled to certain benefits based on length of employment or service whether or not the employment was active. Settling this issue, particularly with respect to pregnancy and parental leave, is valuable.

In conclusion, we want to live in an environment where we can earn a living wage, preserve our health and be involved in our families. We want laws that protect workers against unscrupulous employers and we want those laws effectively enforced. We want a government that protects social justice for all citizens and provides an infrastructure to support all of us.

We're not saying here that the Employment Standards Act as it currently exists is good enough either. The standards provided are too low, too many workers are excluded and enforcement is slow and ineffective. This act needs to be strengthened to provide better protection for the most vulnerable workers who depend on it.

We're calling on the government to enact the provisions in Bill 49 dealing with pregnancy and parental leave entitlements; withdraw the rest of the changes proposed in Bill 49; and introduce amendments to the Employment Standards Act which strengthen it by (1) raising minimum standards for hours of work, minimum wage, protection of part-time workers, vacation entitle-

ments and pregnancy and parental leaves; (2) introducing standards for sick leave, leave for family-related responsibilities and protection against unjust dismissal; (3) including more workers under the protection of the act; and (4) improving enforcement of all standards by initiating employer audits and by providing explicit mechanisms for filing complaints, particularly third-party or anonymous complaints.

Mr Lalonde: One of the questions that struck me is on page 7, anyone whose claim is for more than six months or more than \$10,000. We know that people, before they lodge a complaint, will be looking for a job, because otherwise they'd be fired most of the time. Because people who will lodge a claim of over \$10,000 and over six months are out of work and are in real need of money, most of the time they will accept a claim of up to \$10,000 and just forget the rest. Do you think this is going to be fair to those who have been really jeopardized, have lost money?

Ms Zavitz: I think that will happen in a lot of cases and I don't think it's fair.

Mr Lalonde: It certainly won't be fair. Really you would like to see the government removing that six months and allowing the two years like it was in the past, and not having a cap on the \$10,000?

Ms Zavitz: That's right.

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Mr Christopherson: Thank you very much for your presentation. I want you to know that the insult you feel over the government calling this improvements, knowing that indeed they are taking away rights as shared by hundreds and thousands of individuals and organizations across Ontario, is now on Hansard and there in the record to be seen. The government is fooling no one with its Orwellian doublespeak approach, by calling things improvements when indeed they're the opposite. It's time they got called on it.

I want to give you a little bit of bad news. The part they have withdrawn regarding flexible standards, as to whether or not it's coming back, I'll just quote to you from the minister's comments when we opened these hearings a few weeks ago: "We remain committed to providing more flexibility to the workplace parties." So that monster is coming back again.

Given everything that you've said here and given the fact that the government has been exposed in terms of the takeaways that are really contained in here, would you agree that at the very least, if the government won't kill Bill 49 — which it ought to do, other than the one clause that we all agree is housekeeping but should be done — they should at least fold it into the overall year-long review so that we can see it in the context of God knows whatever else they may be dreaming up to do to working people and their unions?

Ms Zavitz: I think seeing the whole picture would be of benefit to everybody, yes.

Mrs Barbara Fisher (Bruce): Maybe if we could make an assumption to start, the assumption might be that we're all here to help and to care for workers in the province of Ontario. I know personally speaking I am, and I'm trying my best to contribute to that.

We also face the reality that the collection officers — and I'm now on the collection issue — in the past were

released from their employment, and that because of a \$100-billion debt, we're now forced to do things that maybe aren't popular and are very difficult. I think we can all agree that throughout every city we've been in, most of the presentations have supported the next statement, that the collection process in the past was abysmal and workers aren't being cared for because of that.

In our first week experience right here in Toronto, we had a lady come forward who was a telemarketer, not represented by anybody, just representing herself, pleading with us to in essence get government out of her way so collection could be done, because government hasn't been able to, with the people in place today or over the past 18 months, correct the situation for herself as a single parent and her three children. There is no incentive right now to help that situation along. Today, deals are being made. People are only collecting 25 cents on the dollar. So we're no better off no matter which way any government — taking all the politics out of it, we've failed. Everybody has failed.

Having made those points, why are we so afraid to let specialists help us out and do what they do best, and collect for these people who are in need?

Ms Gee: I think if you go into the broader society, the collection agency kind of thing is very threatening to any individual and it usually represents power on the part of the person who's collecting. I'm a little worried about what you said in terms of how we're all here for the good. We're talking about proposed legislation. Surely one of the functions of legislation is to be fair. I think what we're saying is it's not being fair to the most vulnerable of society. I'm still disturbed by the program I saw on TV quite recently on the garment industry and how much is charged for something that cost, in terms of labour, maybe a 20th or even higher percentage. The exploitation is there, whether we acknowledge it or not, and the legislation should be there to address that. If the legislation is making it harder for the most vulnerable in society, then there's something very wrong.

Mrs Fisher: I don't disagree with your comment —

The Chair: I'm sorry, Mrs Fisher, but we're well over our time already. I'd like to thank you both for taking the time to come and make a presentation before us this afternoon.

PROVINCIAL BUILDING AND CONSTRUCTION TRADES COUNCIL OF ONTARIO

The Chair: Which leads us to the Provincial Building and Construction Trades Council of Ontario. Good afternoon and welcome to the committee. Just a reminder that we have 15 minutes for you to divide as you see fit between either presentation or question and answer.

Mr Alex Lolua: We'll try to keep ours short, because we'd sure like to get some interaction with the committee. Beside me is Joseph Duffy. He's the business manager and secretary-treasurer for the Provincial Building and Construction Trades Council of Ontario. My name is Alex Lolua. I'm the government relations rep for the council.

Basically, we're an umbrella organization that represents 100,000 unionized construction workers in the

province. Our members perform work in the building and construction industry, such as erection, repair, alteration, maintenance and demolition, as well as the manufacture, assembly, fabrication and handling of building and construction material.

Many of the concerns that we have with the bill are similar to some of the things you heard from other labour groups, but particularly the time limitation things and the effect that it has particularly unique to the construction industry. Much of what we have to say is related to what Mr Raso told you previously from the Sheet Metal Workers, and I hope you all had an opportunity to try to listen to some of the technical things that Jerry said, because they're very salient to the impact that it has on the construction worker.

Presently, legislation requires a construction worker to register a claim for lien if they are to have any rights. This requirement can be waived by the director of the employee wage protection program if the claim is only for vacation pay or for hourly wages. A lien claim must be registered if the worker has a benefit component to their claim.

The Construction Lien Act stipulates that any liens expire unless an action is commenced within 45 days of the last day to register them. The result is that a construction worker would have to decide in a very short period of time whether he or she has to act on a lien claim or proceed with an EWPP claim. The difficulty this presents is that the construction industry is a highly fluid and mobile sector with numerous small companies. It can be very difficult to get information on an employer, particularly a small one or one that has numerous interrelated companies. So an employee with possibly very little information will have to decide whether they are better off proceeding with the employee wage protection plan application, with a maximum recovery of \$2,000, or a lien claim, which has a potentially higher recovery ceiling but which may have less potential for success.

The election an employee makes has an impact on government in that if employees choose to proceed with an EWPP application and not a lien claim, the government will foot the bill when it could have avoided doing so had a lien claim been successful.

Bill 49 also has further effects on the lien claim process. Previously, no grievance or arbitration process was required where an employer did not dispute the money owed to an employee under a collective agreement. Where it was simply a calculation such as number of hours times rate of pay, no grievance was required to enforce a construction lien claim. The EWPP had accepted this approach except in circumstances where the employer denied liability. This was particularly useful where the employer was bankrupt or willing to admit the amount was owing and simply did not have the money to pay. It now appears that employees will have to grieve and obtain an arbitrator's decision upholding their entitlement. Where this will probably benefit labour lawyers, it's hard to see who else would derive any advantage from this requirement.

In light of that major critique, it's obvious that we have serious concerns about these time limitations for filing an employment standards claim. The decreased time

limitations can also have a significant impact on our industry, and I'd just like to walk through a bit of a scenario.

As was stated previously, the construction industry is characterized by temporary employment, many small employers where the average crew size is about five, and cyclical employment. Many construction workers work for several employees in a single year, so you can imagine the difficulties a person would have if he ran into two or three of these situations where money was owing and he's having to make an election of how to recover his claims. Plus, when you look at how highly competitive construction is, there's a decrease in public works and more and more companies are cutting their margins thinner and thinner, and the bankruptcy rate and company failures are increasing every year. Therefore it is not very unusual to see construction workers facing these dilemmas I explained previously.

By way of explanation for the committee, normally when contracts are negotiated in construction, a determination is made on how much of the settlement goes into hourly wages, how much goes into benefits and how much goes into things like training funds. In construction, a significant amount of a worker's wage package goes into these things. With the changes proposed in the legislation, union members could urge their negotiators to put more money into wages and less into the benefits side simply because it makes making a claim easier. Again, this type of action would not be beneficial to government, as it would cause increased demands on systems like the health care and welfare systems.

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One thing we would like to commend the government on is this removal of the intent to allow people to negotiate employment standards in the workplace. The potential for abuse in our industry is huge, particularly in light of the fact that construction is very cyclical in nature. It is our very strong opinion that these measures should be left out of the government's plan as it prepares for the next round of amendments to the Employment Standards Act.

I guess the one last thing we'd like to leave you with briefly is the consideration of termination and severance pay issues for workers in the construction industry. There are certain individuals who do work for single companies for most of their working lives, and these people should not be excluded from this basic fundamental right that employees from other sectors of the economy have in terms of employment standards protection.

We welcome any questions that you may have.

The Vice-Chair: I thank you. We have about eight minutes left, so there's two and a half minutes per caucus.

Mr Christopherson: Thanks for your presentation, Alex. We've heard an awful lot about the construction industry and it really has been extremely varied, like in everything else that we've heard. If it's an association representing the business side of things, they think this is just mother's milk. If it's anyone who represents workers, unionized or in communities or the most vulnerable or non-unionized, they really see this as starting to deconstruct the fundamental rights and minimum rights that workers have.

One of the things I heard along the way, and I'd like your thoughts on it, is just how these changes might affect the underground economy in the construction industry, which I understand is a growing concern.

Mr Lolua: It can be. One of the ways we can see it being a problem with the underground economy is that if you start to look at some of the disincentives to be aboveboard, with fellows having their benefit plans taxed and the fact that there's less and less that they can recoup through an employee wage protection plan claim or other things like that, the guys are going to look at it and say, "Hey, if I'm working under the table, I can probably gross about \$2,500 or \$3,000 in a week, with cash on the dash." If you look at that with probably netting \$1,200 or \$1,300 in a week and not having very much protection, the guy's probably going to look at that and weigh it and say: "Hey, maybe it's worth the risk to go underground because I'm not going to be protected. So if I get stiffed for a week here, I'll make up for it because I'm going to make double or three times the money by being underground." I don't think it will be a main concern for pushing people underground, but it will be another contributing factor.

Mr Christopherson: Just to continue that thought, do you think it's also possible with this legislation that as much as business at first blush may think it's wonderful not to have to worry about minimum standards as they exist today, they haven't thought through the fact that if you make it easier for unscrupulous types to be bad bosses, then that's not good business for the people who want to be good bosses and want to be lawful players in the economy?

Mr Lolua: Sure. It'll probably make it a lot tougher to be competitive. Joe's probably seen people come and go.

Mr Joseph Duffy: Certainly what he calls the good employer is not going to get the work because they have to put in a minimum of the wage packet, but what he called the under — the people who are not looking after their workers can cut off their vacation with pay, their benefits.

Mr Lolua: Plus with construction being so highly mobile and fluid, it's easy for someone to close up shop, start a new company and close up shop. So the exposure and the cost-benefit for somebody, using colloquial terms, stiffing a worker, there's probably a real upside to it for an unscrupulous employer.

Mr Baird: Thank you very much for your presentation. Your union is certainly very constructive and has provided a lot of constructive public policy advice to the government in the health and safety review, and I believe it's the president or chairman of your union who was recently appointed to the board of directors of the Workers' Compensation Board. So you've certainly represented your members very well.

You brought up in your presentation the issue with respect to unpaid wages, particularly with respect to the construction industry and liens and the employee wage protection program. I can indicate to you that it's true that an individual will have to elect whether to pursue a lien for unpaid wages or vacation pay or to apply to the employee wage protection program for compensation. However, the individual does not have to make the

election until the issuance of a statement of claim, which I think you alluded to in your presentation paper.

In addition, a lien must be registered within 45 days of the last day of work, and there is a maximum of 45 days after the claim for liens is made before a statement of claim must be issued. Thus, an employee has up to 90 days after the last day of work to decide which route he or she wishes to pursue. I know that's only one of the issues. I don't think we have time to go through a number of them, but that's one concern I know you raised.

Mr Lolua: I'm sorry, is that a question or a comment?

Mr Baird: That's a comment. Do you have any comments in response?

Mr Lolua: In talking to some of the staff from the ministry, I understand that's one of the things they're going over, and certainly we urge them to look at that aspect. I think there's some great confusion over it. To go back to my answer that I gave to Mr Christopherson, in construction you don't get paid the first week, so there's that one week holdback. Potentially, someone could work two weeks before they're in this situation to find out they're owed wages. I think we need to simplify it as quickly as possible to make it a process that people can understand and get fair access to their owed earnings.

Mr Lalonde: Thank you, gentlemen, for coming over and explaining to us the concern that you people have. Knowing that construction is the heart of the industry, the construction industry at the present time is a tough trade, we know, especially with the competition of the Quebec construction industry.

I have a question that I would like you to elaborate on. You talk about the employee wage protection plan vis-à-vis the lien action. What's going to happen in there with the changes that are brought forward by the government in Bill 49?

Mr Lolua: I think we put it in our brief. What will probably happen is, first of all, union members are probably going to say to their unions, "Hey, don't start negotiating benefits in my package," because that's tougher to claim in a position where you're owed money. They're going to want more and more money put into their wage package because it's easier to get a claim on it. You can go right through the employee wage protection program.

Mr Lalonde: You can't go with both.

Mr Lolua: You can, but if you look at making a lien claim, Revenue Canada gets in line before you, usually the banks get in line before you, so the employee's wages are one of the last things that are down at the bottom of the list. So the guy's going to say to himself, "If I go through this construction lien claim, it's probably a long process" — I think Mr Raso eloquently talked about the backlogs in the courts — "so let's just go quickly to the employee wage protection plan because I know I can probably get the \$2,000." Again, it was reiterated in our paper. I think that's the election, and Joe would probably agree, that most guys will make.

So instead of the government having an opportunity to help people get their rightful entitlement — it's going to help them in a sense, but the government's going to be footing the bill, probably to the tune of \$2,000. Most

construction workers will make that in a few weeks, especially if you're working a shutdown, you're working 12-hour shifts or seven days in a row, with your benefits and your total package, you can earn that in a week or two at tops.

The Chair: We've reached our time. Thank you both for taking the time to make an appearance and make a presentation before us here today.

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CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 3903

The Chair: That leads us now to the Canadian Union of Public Employees, Local 3903. Good afternoon. Welcome to the committee.

Mr Michael Kanter: My name is Michael Kanter, and I'm the chief steward of grievances for Local 3903. My colleague Val Patrick is a business agent with our local, and he'll introduce the colleague to my right.

We represent about 1,800 contract faculty and teaching assistants at York University here in Toronto. I'm going to do what I tell my students not to do, which is basically to read a brief. I apologize in advance for that because we were parachuted into a spot which just recently became open. I'm going to just make some general remarks on the provisions that force unionized employees to pursue their Employment Standards Act rights under the grievance and arbitration procedures of their collective agreements, and my colleague will provide some details as to how that might impact on our local. I also want to strongly voice our objection to the principle of shifting the enforcement of rights, especially including the cost of doing so, from the government to the parties.

We believe there is a place for self-reliance and for the parties to work out their differences without a government presence, but in the area of enforcing basic rights, a government presence is vital. Unions are particularly vulnerable where new costs are imposed on them in a time of scarce resources. The arbitration process has many flaws, and closing off the option of having complaints dealt with by the ministry is simply unfair to organized employees. Of course, this change will hurt smaller bargaining units the most, where entitlements of the act, such as severance pay, are more likely to apply to workers.

Note that we are talking here about minimum standards only. It's one thing for an employee to have the option of having the union use the grievance procedure to pursue a claim, and it's quite something else to have the government say that it's not going to be a part of such a claim.

I also want to highlight the fact that the government is not offering to address problems with the arbitration process, such as the very high costs, as a tradeoff for forcing unions to use arbitration instead of the Employment Standards Act process. The government bears a major responsibility for ensuring an effective arbitration system, especially given that the parties are forced to use arbitration.

Furthermore, the changes expose unions to new claims against them by bargaining members who are dissatisfied with representation by the union in enforcing the act. In this regard, a member might file a complaint saying that

the union has breached its duty of fair representation. So there's the added potential of pitting unionized employees against their union, whereas currently unionized employees at least have access to the enforcement powers under the act.

Finally, it's unclear whether arbitrators will be able to effectively exercise the powers which employment standards officers currently exercise.

We see a dangerous trend at work here. Instead of improving the legislation for all employees, the government takes the pressure off by privatizing part of it. It's then in the position where, not only does it save money by refusing to enforce the act but it can also blame the parties for flaws in the process. The basic result is that unions have to pay for the enforcement of public legislation.

We want to make clear that while we're focusing on several key issues under the act, we're also concerned about other areas of the bill, such as restrictions on the recovery of money. Other people have mentioned those things. I'm sure some of these themes are quite familiar. This is troubling in the sense that it's well known that workers find it difficult to make claims against their employers and often do it only once they've left employment.

We also want to voice our strong objection — and this is something people have referred to too — to the potential reintroduction of the notion that parties could go below the minimum standards in some areas as long as the overall package meets the standards. Our position is that this would ultimately force unions, again the smaller ones, to bargain on employment standards which should be a matter of statutory right. On the surface it's appealing to speak of flexibility for both parties, but the hard reality is many unions will be bargaining away employment standards. This is apart from the very serious problem of identifying equivalencies, which is another thing that people have spoken about previously.

I'll now ask my colleague Val Patrick to elaborate on a couple of specific ways it impacts on our local.

Mr Val Patrick: I'll try not to just simply read a brief here. I'm speaking on behalf of three unions I work for, and those are 3907, which is graduate assistants at OISE; 3908, the part-time faculty at Trent; and then 3903, which we're here speaking directly for, the contract faculty and TAs, at York University. These groups represent a cross-section of the real structure of unions in Ontario. Those first two are small units, one 130 members; the other 180. Annual budgets top out at less than \$20,000. That pays for all manner of things: hiring lawyers, paying for arbitrators, bargaining agreements, paying staff and what not. So there's not a lot of money.

This is typical. Unions are not some big giant. We're not dealing with the banks, we're not dealing with Hydro or Inco or Stelco; we're talking about small groups with limited budgets. As noted, of course, we're required by legislation as well as through the collective agreements — disputes are settled by way of arbitration. This is what you're proposing through this legislation, that unions should now have to pick up these costs. Well, what are these costs? I've got some examples noted here.

In the spring of 1995, Local 3907 at OISE, we took forward a grievance. It was a fairly straightforward,

simple thing, a hiring dispute. The sort of thing reasonable people can disagree about. We saw it one way, they saw it the other. We were lucky; we got away with a one-day hearing. The cost to the union was \$1,600. It was actually a little more than that. That's out of a budget that year of about \$18,000, less money to the national organization. That was one dispute.

At Trent, at 3908 that same year, we had one. Actually, there were several cases; this was one that went. We also got into some dispute with the faculty union, so there was a tripartite aspect to this. The cost for one hearing, which we succeeded at but it was spread over two days: \$4,000. Again, this is not a rich union.

The third case — and I'm going to make a little bit of a highlight of this one, I'll tell you about it — involves a dispute over the hiring of one of our members of contract faculty of 16 years, Mr Janczak sitting over here. We went to arbitration. We felt the employer should have hired this gentleman. We fought for — I believe it was five days actually of hearings on this. The cost was over \$10,000.

You'll see here there's a report from Lancaster House Publishing, which we have permission to use. Lancaster House Publishing actually picked up on this award. Lancaster House, for those who don't know, reviews cases across the country, publishes on lead awards and significant changes in legislation. They picked up on this because it was such a unique case and a leading case following current new trends that spoke to affirmative action and so on. We felt that this case went right to the heart of justice. They talked about it for four pages, and it goes on and on. In the event you're interested you can read this in detail. I'll not go into it, but they said this is a major trend. It cost our local union \$10,000 just to get that far.

What Lancaster didn't know — and you'll find it if you get to the second to last page. I will just read this: "After nearly six months, which was longer than the hiring process we disputed in the first place, we have been unable to get the employer to agree to a remedy" in this case. "They have dangled some meaningless review process into the wind for months now...." We're now back to having to call another arbitrator to come back and hear this case again. It's going to cost us thousands more dollars, and here we go. This gentleman is still sitting there out of work. This is the process.

Let me say this. I've been involved in arbitration for over 20 years and I've dealt with some pretty rotten employers. I come out of the steel industry and I know what a bad employer is. These are good employers. We're talking about a system that doesn't work to start with, that's completely unjust, overpriced, and by insisting that unions must go this way, you are removing justice in the workplace from organized workers. That's what's meant by this.

I will read you my conclusion here, and I've got a couple more remarks based on what I've heard.

What each of us does for our livelihood or what we're working at and towards in large measure defines to each of us who we are. And too, the community in which we live and work also defines our individual and collective character.

What makes a society is the commonality of shared beliefs, experience, ideals and standards. It is not something arrived at overnight and it's not always defined, either by borders or even geography. Our sense of society, of being a part of something, and knowing its character and dimensions and flavour, is also defined in us through the standards by which we live and conduct our lives.

1700

We fear greatly that this proposed legislation would tear at the fabric and soul of Ontario. Our society, our sense of community and a provincial solidarity, is threatened by this dismantling of the rules by which all Ontarians are employed. If we have not common standards, then there soon will be no standards, there will be none, and something integral to what makes Ontario who and what she is will be gone.

The Ontario we believe in is a caring place that values the contributions of all its citizens. We cannot all be highly paid stockbrokers, bank vice-presidents or members of provincial Parliament. However, whatever our station in life and the workforce, we all want a decent home, time with our loved ones — I'll just throw this in: not being forced to work steady 12-hour shifts to make a mortgage payment — decent food to eat and to be able to savour the bounty of this most fortunate of places. Yet this is not possible where the government of the day will not insist upon and enforce key minimum conditions of employment. Sweatshops exist now and can only proliferate if you pass these changes.

Ontario should never be allowed to proclaim it is open for business to the likes of greedy, Third-World-styled capital interests, which is who this legislation is sending out a world-wide greeting card to.

I just want to make a couple of other comments. All work does not have dignity attached to it. There is no dignity on the women we see down the street selling their bodies. There's no dignity to people who are single parents being forced to work in doughnut shops, 12-hour shifts, while their kids are at home, and they're supposed to try to make do on wages that are just abominable.

The phraseology of some of this — I think somebody must have studied Orwell when they were in school.

There's a whole other alternative to this thing about, "Well, what do we do about enforcement?" Everybody who comes to this House of Parliament, speaking on behalf of those with no voice, should be ashamed of themselves that there are people out there who cannot get their wages paid and so on. How do you do that? "Well, Jeez, should we hire more police, or should we hire more enforcement?" No. Put the people in jail who are refusing to pay these basic minimum standards. There's the solution. Of course, maybe that's going to be too close to home for some, I don't know, but that's the solution. You don't just try and farm out responsibility for the working conditions in this province. You're washing your hands of what you're supposed to be here to do on behalf of working people.

That's our submission. Thank you.

The Chair: Thank you very much. That takes us just a few seconds shy of 15 minutes, so we won't have time for questions, but thank you very much for taking the

time to come and make a presentation before us today. We appreciate it.

UNIVERSITY SETTLEMENT RECREATION CENTRE

The Chair: That takes us now to the University Settlement Recreation Centre. Good afternoon. Welcome to the committee.

Ms Cassandra Wong: Good afternoon, members of the standing committee. I'm Cassandra Wong and I'm working at the University Settlement Recreation Centre. It's my pleasure today to have a chance to speak in front of the committee to express my concerns and also my views on Bill 49.

I have been working in the community for several years and I see both English-speaking and Chinese-speaking clients. Most of them are newcomers, immigrants and refugees, and most of them work in factories or in restaurants.

Over the years, I have seen many cases of my clients being exploited by employers. I can give you typical examples: the workers work for long hours and they are underpaid. Normally they are paid less than minimum wage, such as \$4 or \$5 an hour. I have also seen incidents of employers opening up a new factory, hiring a number of workers for a few months or a year and then filing bankruptcy or closing down the factory. In the meantime, these employers would also open up another factory which would be incorporated under another name.

Let me give you an example of this. A classic example would be the Lark case which was brought to court in 1990. The case happened in 1988 when more than 120 Chinese-speaking garment factory workers of Lark Manufacturing were laid off by the employer without proper notice. This employer owed the workers unpaid wages, vacation pay, severance pay and termination pay, in total about half a million dollars.

The community lobbied the Ministry of Labour to initiate prosecution proceedings against these directors. After years of battle, the Court of Appeal affirmed in 1995 that these directors are responsible for the half a million dollars in wages owed to these workers. But to date these workers have not even collected a penny because the directors have filed for bankruptcy.

I have worked with these workers for quite a few years. It's very sad to see that it took eight years to resolve a case. Also, ironically, a couple of these workers have already passed away. One thing I do believe is that this is the most significant case that has ever been prosecuted under the Employment Standards Act in the history of this province.

Besides this, recently I have seen more and more incidents of employers laying off their workers without just cause, or the workers are forced to quit their jobs because they never get any money.

An example I can give you is that most of my clients, when they come in to see me, tell me that normally employers owe them from a few hundred to thousands of dollars. This is typical for my clients, because the employers always tell them that they will have money to pay them one day. So my clients will stay there, and one of the reasons is that it is very difficult for them to look

for another job. So they work there for about one or two more years and eventually they are forced to quit their jobs because they never receive any money.

In addition to this, I also have clients coming in to see me who tell me their experience of working in restaurants. There are workers who apply to Canada on a work permit through their employers. After they arrived in Canada and after they started working in the restaurants, they found out that they have to work long hours and they got very low pay, which is completely different from the agreement they signed with the employer.

Let me give you an example. I have a client who came in to tell me that originally the employer promised to pay him \$500 a week, for 40 hours, but it turned out that he had to work 60 hours a week for only \$300. These clients are afraid of filing a complaint because they're afraid of being kicked out of the country. Another example I can relate to the committee is that there are occasions, or it happens quite often to my clients, that employers never pay any tax for them.

Now that the committee has heard many examples I have given on behalf of my clients — and many of them do not speak English — I would like to urge the standing committee to really look at these real-life scenarios: the different kinds of exploitation and abuse being practised by these employers.

Also, I am a member of the Employment Standards Work Group. I know they made their presentation a day ago. I strongly support the recommendations proposed by the group.

Also, to make it short and very brief, I reiterate the proposed recommendations again: Firstly, that the two-year claim period for complaints be reinstated; secondly, no maximum or minimum amounts be set for a worker's claim; thirdly, that more enforcement be imposed upon employers' reprisals by means of implementing more operation spot checks and accepting anonymous complaints from workers; and lastly, that the use of private collection agencies not be approved or implemented.

1710

The Chair: Thank you very much. That leaves us two minutes per caucus for any questions. This time the questioning will commence with the government members.

Mr Rollins: I want to express to you the concern that I have in the wrongdoing that those people have been dealt with. I don't feel this government or any government should condone anything to allow any employer to be in the position to exploit somebody's just dues as coming from them. I know some people say we are a heartless group and we're not going to do the thing that we wanted to do — you can listen to what comes across the table and they all tell us that — but I don't think there's anybody in this government who has any intent to put an employee in a position that they shouldn't be given their just dues.

Thank you very much for the presentation. It was well presented.

Ms Wong: I'm very happy to hear that. Actually, many of my clients know that I'm coming to speak today on behalf of them, and for sure I will tell them what you have already stated.

Mr Lalonde: Thank you for your presentation. I just wondered, the actual employment standards that are in place at the present time didn't even work for those 120 people who didn't get paid properly?

Ms Wong: No. I started working with the group in 1988 and then I changed my job in 1992. From what I know, when the ministry prosecuted the employers, the directors filed bankruptcy, and then the Ministry of Labour took the case to the Court of Appeal and eventually the workers won again, but this time, the directors filed bankruptcy again. But what we are aware of is that these directors, over these past years, have been opening different factories at various locations, like one across the street, and the factories were incorporated under different names, under their relatives' names or friends' names. That is the reason why still now the workers haven't even got a penny back.

Mr Lalonde: Is the case still in court, though?

Ms Wong: No, it's finished.

Mr Lalonde: It's finished and the employees didn't receive anything yet?

Ms Wong: No.

Mr Lalonde: I really feel we should make sure that if Bill 49 is going through — the government has the majority on this case — we will have a clause in there that would cover any anonymous complaint, that there should be somebody at the Ministry of Labour who would take over immediately, not to wait a number of years that we have to wait in such a case.

Ms Wong: Yes, thanks very much.

Mr Christopherson: Thank you very much for your presentation. I would just caution you when you're listening to the words of the government members that actions speak much louder than words, and at the end of the day, if they don't pull back Bill 49 or make massive amendments, all the nice words in the world aren't going to change the fact that the people you represent have lost rights and are going to be in a much more difficult position than they were before.

I want to ask you about the six months and the two years. You said there are a number of people you represent who are perhaps new Canadians, English isn't their first language, they're intimidated in the workplace, they don't know necessarily what their legal rights are and often have no choice but to stay in a bad-boss situation until they have another job and can move to that and then file a claim and go back at least the two years.

The government argues that it'll be better for the people you represent if they can only go back six months, because that will force them to claim within six months and therefore somehow the case is going to get resolved quicker. We have said that what it means is workers in this position will still stay in the workplace because they're still intimidated. The only thing that will change is they'll lose a year and a half of money that's owed them and there'll be no benefit. That's what we have said. That's what they have said. What do you say?

Ms Wong: I would say not to reduce the period to six months, because what happens frequently and is common among my clients is that employers normally owe them wages — more than six months. I can tell you that among the cases I have seen, more than 50% of these

clients, the employers owe them wages, more than two or three years. You know the reason why? Because a normal person would not stay with an employer for such a long time if the employer would not pay the workers money at all.

How the employers take advantage of the law is, they understand that the workers do not speak English — this is number one. Number two, they understand that under these difficult economic times, it is very hard to look for a job. Number three, they will try to tell the workers all the time, "It's okay, I will pay you very soon." Then they will pay a couple of hundred, a month later. But it ends up that after two or three years it accumulates to an amount of \$4,000 or \$5,000.

The workers have nowhere to go. They know that a community centre would not represent them to run after these employers, but because the community centre has the language-speaking staff, that's why they come in to tell us and that's why they come in to seek our help.

The Chair: Thank you very much, Ms Wong. We appreciate your taking the time to come and make a presentation before us today.

Mr Baird: Mr Chair, on a point of order: I'd like to move a motion and then speak to it, if I could, which obviously changes the agreement and the report of the subcommittee that was adopted on August 19. My motion is as follows:

That the committee not sit on Friday, September 13, for clause-by-clause consideration of Bill 49; and

That the committee sit at the first available regular scheduled meeting time for the purpose of clause-by-clause consideration of Bill 49.

Could I speak to it?

The Chair: You may, Mr Baird.

Mr Lalonde: Do you have a date?

Mr Baird: The date would be the next regularly scheduled committee time, which is Mondays and Wednesdays at 3:30.

The Chair: The week that the House reconvenes.

Mr Baird: The House comes back Tuesday, the 24th, so that would be the 25th at 3:30. I'll speak to this.

As I mentioned at the preamble to making the resolution, obviously this clearly does differentiate from the agreement the subcommittee had and then adopted by the committee on August 19. I argue it's not a substantive deviation from the agreement, but it certainly is, unquestionably, from the letter of the agreement.

The government members would like to take a period of time to consider what amounts to about two or three feet of submissions that we've received in hearings in 10 communities across the province. By my count, we've heard from about 263 witnesses. I know each one of the government members has been listening and taking notes to consider in our discussions between days of the committee. We've certainly learned a lot. We have been listening and want to basically have the opportunity to consider what we've heard prior to moving to clause-by-clause. The government feels that it would like to consider a number of amendments to the bill — to consider potential amendments, I should say.

I want to be honest, however. It will come as no surprise to my colleagues, particularly on the opposition

side, that we're not likely to consider scrapping the bill. I think we remain convinced of the bill's merits. But it may come as a surprise to my colleagues in the opposition that we have been listening and want the opportunity to genuinely make consideration for potential amendments to the bill. If we can make the bill a better bill, I think the government members have no narrow view to precluding that. So that's basically our argument.

Mr Christopherson: You have to wonder what the thinking was in the beginning when you agreed to these hearings, when you set forward and agreed to this time frame, if you weren't planning to listen to people anyway. If you needed time to listen to that many submissions and you were serious about it, then it would seem to me that you would have built in a period of time to do just that, bearing in mind that we're only here because the government was forced into the public light. The only reason we've had all these submissions is because we forced you kicking and screaming out across the province to give people a chance to be heard.

1720

Nice of you to drop by.

Mr Chris Stockwell (Etobicoke West): Excuse us. Are we interrupting?

Mr Christopherson: Yes.

The Chair: Order, gentlemen, please.

Mr Christopherson: It would seem to me that if you're suggesting that you've been listening in some way to the people who have been making presentations in terms of criticisms of this legislation, if that's true, then you cannot ignore the fact that they have said, almost every one of them, that at the very least you should pull back 49, if you're not going to kill it, and fold it into the year-long review.

I don't believe for a minute that you've listened. I think you have got serious problems with this legislation. You attempted to ram through something that is shoddy work. It's not thought through. You've probably got pages and pages of amendments to try to correct a poorly constructed, ill-thought-out piece of legislation, and to support this at this stage of the game, the evening before the final clause-by-clause, to me, just gives credibility to a process that you never bought into in the first place.

I would be prepared to accept that we would adjourn after today and make this a part of the year-long review. You would have my overwhelming support for that. But to give some credence to the fact that you're just out of control, you don't know where you're going with this legislation and you've obviously got major problems — you're so confused that the only thing you can do is pull back the night before we were to make clause-by-clause analysis. Now you're scrambling, using the excuse of wanting to listen to people as a cover for the incompetence of this government's actions around Bill 49. Your incompetence is only exceeded by the mean-spiritedness contained in Bill 49 and the harm you're going to do to the most vulnerable people.

I reject your arguments completely. I find them shallow. I find them to be inconsistent with what we've heard. I think the only honourable thing for this government to do at this time, if you truly care about honour, is to refer all of this to the year-long review and at least put

some credibility and honour into a process if you won't put it into law. I will vote against this.

Mr Baird: If I may just respond to my colleague from Hamilton Centre's remarks, I was struck by one of the presentations we heard today, the Communications, Energy and Paperworkers Union of Canada, one of the locals that spoke today. They said something to the effect that this committee's review is wasting people's energy and discrediting the government's phase 2 plan. That's certainly not the government's intention. We've had these hearings for three weeks. We have had over 260 groups appear. I think to say we're scrambling with respect to amendments is simply not the case.

Do we intend to present pages and pages and pages of amendments, hundreds of amendments? No. There are a number of issues that have been raised with respect to the bill. People, on a number of issues, have seen things in this bill that frankly I, as a committee member, don't see, and we want to have the opportunity to consider if there is validity in a number of their arguments.

Your request to pull back this legislation and fold it into the comprehensive review, phase 2 of the review that's already under way, is certainly your opinion. It's not one that I share. I think we've certainly heard probably the most representative sample of opinion across the province on this bill. We've spent a good three or four weeks when the House isn't sitting, when we could have been on a number of other very important committees, when we could be attending to constituency business. We have been listening.

I appreciate that there's a difference of opinion in your evaluation of the bill, and that's fair. That's obviously your right. You'll respect that we disagree with you on your statements with respect to your evaluation of the bill.

However, I have no inhibition whatsoever in saying that it's not somehow a bad thing to want to consider opinion. I look at the papers today. That's what we've received in one day alone, and that's a considerable amount of information. Many of them have been identical papers; however, many of them haven't been. I think the government members of the committee do want the opportunity to be able to consider any potential amendments that we may or may not want to present.

Should we have thought of that when we scheduled the committee hearings? Perhaps that's a valid reason. I know on Bill 15, when we considered Bill 15 in this committee, the government, for example, on that bill presented no amendments. That was the case.

I think that's something that's positive, that we are listening. The very thing we were accused of was that we weren't listening, that this was a sham, as one member — not you — of the opposition called it. We have been listening and want the opportunity to consider.

Will that involve bringing forward hundreds of amendments? I'll be very surprised if it does. I know there will be a number of amendments. The minister, on the first day of hearings, announced one that's obviously going to be proceeded with, and there are a number of others that we'd like to give consideration to. Some may or may not be necessary, but if we can clarify the bill to eliminate an ambiguity there, I think that's worth considering as

members of the committee, and of course that opportunity is open to each member of the committee.

Mr Christopherson: Further to the discussion, you're in deep trouble and you've been in deep trouble from the beginning. Let's not lose sight of the fact that this bill was introduced by the minister and called just minor housekeeping. You had no plans for public consultation, and you stood that ground for a few days until you were forced and shamed into finally having public hearings. Your intent was that you were going to make it law by the end of June. So the piece that you've already pulled back would be the law of the land by now if we hadn't gone through this process. You pulled that out because you got into deep, deep trouble defending it. You're scrambling now at the last minute because you're in further deep trouble over the rest of this bill.

I just wish to hell you'd come clean, admit that you've made a major mistake, try to recoup some dignity and put this off into the process you've already announced. Let's keep in mind we heard all these people come forward and have all these concerns. This is a bill you did not consult on beforehand, or at least anybody who admitted to being a part of your consultation wasn't prepared to say so publicly. There was not one labour representative, not one community representative, not one individual who said, "Yes, I got a call from the minister" or, "I got a call from the ministry and they asked me about this before this bill was created and dropped on the floor of the Legislature."

The process is clear. You've been exposed. You've been exposed for exactly what you are: a government that doesn't believe in hearing input. You proved it with Bill 7. Look what we had to do with Bill 26 to get you to have at least some public hearings, some amount of public input. And on this one, we had to literally shame you into it, otherwise this would all be the law of the land. Now that you're knowing that so many people are paying attention as a result of the province-wide public hearings, you know you've got to go back and rework all of this and figure out how you're going to justify what you're doing. That's what this is all about.

That's why my position is, if you want to retain and regain any dignity whatsoever, pull the whole thing back, put it into the year-long review and let's do it properly, openly and democratically. Until you do that, I will oppose you on this and every other anti-democratic move that you come up with during the rest of your term.

The Chair: Any further comments? Seeing none, we'll put the question.

Interjection: A recorded vote.

The Chair: All those in favour of the motion, raise their hands.

Ayes

Baird, Fisher, Galt, Kells, O'Toole, Ouellette, Rollins.

Nays

Christopherson, Lalonde.

The Chair: I declare the motion carried.

Seeing no further business, the committee stands recessed until September 25 at 3:30.

The committee adjourned at 1729.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Vice-Chair / Vice-Président: Mrs Barbara Fisher (Bruce PC)

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Mr Jack Carroll (Chatham-Kent PC)

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Mr Bart Maves (Niagara Falls PC)

Mr Bill Murdoch (Grey-Owen Sound PC)

*Mr Jerry J. Ouellette (Oshawa PC)

Mr Joseph N. Tascona (Simcoe Centre PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mr Doug Galt (Northumberland PC) for Mr Chudleigh

Mr Morley Kells (Etobicoke-Lakeshore PC) for Mr Maves

Mr John O'Toole (Durham East / -Est PC) for Mr Carroll

Mr E.J. Douglas Rollins (Quinte PC) for Mr Murdoch

Also taking part / Autres participants et participantes:

Mr Chris Stockwell (Etobicoke West PC)

Clerk / Greffier: Mr Douglas Arnott

Staff / Personnel: Mr Avrum Fenson, research officer, Legislative Research Service

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Standing committee on resources development

Comité permanent du développement des ressources

Employment Standards Improvement Act, 1996

Loi de 1996 sur l'amélioration des normes d'emploi



Chair: Steve Gilchrist
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENT

Wednesday 25 September 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Mercredi 25 septembre 1996

*The committee met at 1542 in committee room 1.*EMPLOYMENT STANDARDS
IMPROVEMENT ACT, 1996LOI DE 1996 SUR L'AMÉLIORATION
DES NORMES D'EMPLOI

Consideration of Bill 49, An Act to improve the Employment Standards Act / Projet de loi 49, Loi visant à améliorer la Loi sur les normes d'emploi.

The Chair (Steve Gilchrist): Good afternoon. I call the meeting to order for clause-by-clause consideration of Bill 49, An Act to improve the Employment Standards Act. You should all have in front of you the collated package of amendments received by the clerk by the appointed time. If that is the case, we'll move immediately to consideration of the various clauses.

In light of what's been proposed, I ask if there are any amendments to section 1 or 2 of the bill. Seeing none, I'll put the question.

Mr David Christopherson (Hamilton Centre): Mr Chair, on a point of order: The rules provide for a 20-minute opportunity before voting, at the request of any member of the committee, as I understand it. Is that on all votes or just on amendments?

Clerk of the Committee (Mr Douglas Arnott): That would be available to each member to ask for on each vote.

Mr Christopherson: Thank you. I'd like to request that on the first vote, please.

The Chair: There'll be a 20-minute recess.

Mr John R. Baird (Nepean): Does the question have to be put first?

The Chair: Thank you, Mr Baird. I'll put the question, at which point we'll take a 20-minute recess. Is it the favour of this committee that sections 1 and 2 of the bill carry?

We will take a 20-minute recess.

The committee recessed from 1544 to 1606.

The Chair: I call the meeting back to order. The question having been put, all those in favour of approving sections 1 and 2 signify by raising their hands. All those contrary? Sections 1 and 2 carry.

Are there any amendments to section 3 of the bill?

Mr Baird: I don't have an amendment, but I just indicate to all members of the committee that it would be the government's intention to vote against this section of the bill, relating to the minister's commitment in her opening statement on August 19 to withdraw that section.

The Chair: Any further comments or amendments?

Mr Christopherson: A question to the parliamentary assistant: Why are you pulling this out at this time?

Mr Baird: I think the minister was clear in her initial statement to the committee on August 19 that there was a terrific amount of concern on both labour's and employers' part about why we would change in terms of the package of benefits when we were undertaking a full review of the act with respect to what the employment standards would be. She had no objection, because there was a terrific amount of concern from across the spectrum, to withdrawing that section and putting it over to the full review in the fall.

Mr Christopherson: There was an equal amount of concern, in fact more concern, arguably, on other issues. Since this one was indeed pulled back for much the same reason, what rationale does the government have for saying, "We listened to people's concerns on this part and therefore we're going to make it a part of the year-long review," but not the rest? Why are you ramming through the rest when the same people who convinced you this section should be pulled were urging you to pull other sections too?

Mr Baird: I would just submit that I disagree with your assertion of "ramming" anything through.

Mr Christopherson: You can disagree with my words. You can't disagree with history. The fact of the matter is that had we not forced the issue, this would have been law by the end of last June, including this section. When I ask you now why you're pulling this out, you say because you listened to people who are concerned about it. The same people — you can pull the records; it's there to be seen — the very same people who had concerns about this had equal concerns about other parts. Why are you not respecting their wishes on that and folding all of those issues into the year-long review?

Mr Baird: The minister's announcement of August 19 mirrored her comments at the end of the session of the Ontario Legislature in the spring, that if it was voted upon in the spring session, she was prepared to withdraw that section of the bill pending a full review. This doesn't differ from that.

Mr Christopherson: What a lot of gobbledegook, just absolute garbage.

Let me ask another question. The discussion paper: What's the status of that discussion paper right now?

Mr Baird: It's under review within the ministry and will, I think, be released in the coming month or two.

Mr Christopherson: What is going to be the process of the review? I haven't heard it in public yet.

Mr Baird: That will be fully outlined when it's released.

Mr Christopherson: Do you have a final date as to when that review is to be completed?

Mr Baird: No.

Mr Christopherson: Do you have a date when the legislation is going to be coming in?

Mr Baird: No.

Mr Christopherson: The minister made comments — and I referred to it when we were out on the road — to the possibility that this flexible standards provision might in some way apply to unorganized workplaces. Are you in a position, or will you, on behalf of the government, state today that you have no intention at all of looking into anything like that?

Mr Baird: I think that section of the bill is being put forward to the full review that will take place this fall and in the winter months and will, obviously, be fully discussed with all stakeholders. Thus far the minister's had very good discussions with both business groups and the labour representatives and received some good initial input in terms of putting the discussion paper together, and that will certainly take place during that consultation period.

Mr Christopherson: So you're not prepared right now to say that will not rear its ugly head during this process?

Mr Baird: The minister's put forward the entire package contained in section 3 of the bill over to the full review, and that will be discussed broadly through all sectors of interest in the bill over the following winter months.

Mr Christopherson: I'm ascertaining from what you're saying here today that the labour movement has reason to be concerned that you'll be attempting to foist this process on even unorganized workplaces as well, that that's at least a possibility. You're not prepared to rule that out right now as ridiculous and, abhorrent a thought as that might be, you're not prepared to say that will not happen?

Mr Baird: I'm not prepared to debate section 3 of the bill, since it was announced on August 19 that it is our intention to withdraw.

Mr Christopherson: When this was put together, including this section, section 3, and the rest of Bill 49, there was no consultation, that I'm aware of, with any members of the labour movement, the leadership, that I can determine in talking to the hundreds of labour leaders that I talk to in my capacity as labour critic. If that's not correct, maybe you can set the record straight and advise me which labour leaders did indeed have input. I would also like to know whether the minister met with anyone else, outside government officials, in the development of Bill 49.

Mr Baird: I'm afraid I simply don't have that information.

Mr Christopherson: Can I get that information? Will you get that information for me?

Mr Baird: I'm certainly happy to take the request forward.

Mr Christopherson: Maybe members of the staff are aware?

Mr Baird: I'll certainly take your request back to the minister. I do not know who she did or did not consult with specifically.

Mr Christopherson: Okay. When will you get back to me? Before today is out can you let me know?

Mr Baird: I'm in committee today, sir.

Mr Christopherson: Believe me, you're going to have a couple of breaks along the way. You can make some phone calls.

I also want to go on the record as saying that this whole idea of the flexible standards, like everything in Bill 49 being put forward as something that's a positive or a plus for the workplace, was not borne out by anything we heard from anyone in the labour movement in any community across Ontario — not one.

People recognize this as the slippery slope. They realize that in these tough economic times, with concessionary bargaining taking place in many workplaces, this a further opportunity for this government to see rights workers have eroded. Having sat at a lot of bargaining tables in my own time, I can tell you that over the course of a number of concessionary rounds of bargaining you could indeed end up with a collective agreement that has fewer rights than the Employment Standards Act in virtually every area if you had a ruthless enough employer.

That's the sort of thing this government's allowing. Whether or not that was your intention is a point of political debate. Whether or not it's possible is not. I still have not heard this government admit that is a possibility and that that's one of the reasons they've pulled it back, and, further, that they'd be prepared to say, "We're not going to raise this issue again; we're never going to talk about this again."

One has to conclude that the government, now being aware of these possibilities, feels, "Well, if it happens, so be it." We would have to believe there are elements of the government that rub their hands with glee and say, "Great, our corporate buddies are going to love this." Certainly that's borne out by the other parts of what we're going to debate in Bill 49.

I want to make sure that this government knows without question that if it attempts to legislate something like section 3, it will have a major, major battle on its hands, because it can be seen as nothing but the first step in the total eradication of any kind of minimum standards or any kind of floor or bill of rights, a guarantee, that a worker can have in this province. Working people — not just unions — are not going to stand back and let that happen.

The fact that you're not prepared today, parliamentary assistant, to acknowledge that you won't think about doing this in unorganized workplaces is further evidence that you have no regard at all for the rights workers have, that all you're doing is taking away the rights workers, through their unions, and the unorganized, have earned over the decades, and handing those over to people who already have the upper hand in bargaining.

Contrary to what a lot of the Tory backbenchers think, when you enter into collective bargaining, the power balance is shifted in favour of the employer 10 times out of 10. You're just making that worse. What's so personally offensive is that I know some of you know this and you're still prepared to look the other way and toe the party line, or indeed, worse yet, believe that's okay because it fits some right-wing ideological vision you have of how the corporate world ought to work, which in my opinion and that of my party and certainly my leader

is a dismantling of everything that makes this a great place to live.

That may sound like a rather grandiose argument for one section of a bill, but I honestly and sincerely believe it fits into that vision, as does everything else you're doing. I intend to make sure we fight you every step of the way, both inside this Legislature and outside.

The Chair: Any further comments on section 3?

Mr Pat Hoy (Essex-Kent): We have a great deal of difficulty with this bill in total. Notwithstanding the fact that the minister did mention that this section was going to be removed, in her mind, here we have it today in black and white that you have to amend the bill right from the very beginning of its own printing. I travelled at some great distance in the wee hours of the night to attend clause-by-clause prior to this and wasn't informed that the clause-by-clause was cancelled. That's unfortunate, and apologies have been made to me, and I accept them, but it seems to me the government doesn't have its house in order when these kinds of things occur.

We believe there should be a full review of the employment standards as a package, not having it divided up in this manner, with Bill 49 and yet other pieces of employment standards to be discussed later. We think it would have been better to discuss this all at once. We've heard over and over again during committee hearings that people did indeed want to have the total package heard and not in this piecemeal way.

The government itself said that over time the Employment Standards Act was dealt with in a piecemeal fashion. I wasn't here at the time, but historically, apparently it was. I believe what you say. You're doing the very same thing by dividing it out into two different parcels. We have a great deal of difficulty with that.

Notwithstanding the fact that clause-by-clause was cancelled some time ago and we are here now today, I've just received the amendments and haven't had a great opportunity, not very much time, to look at them. We find that unfortunate as well.

Our view in the beginning was that this bill should have been withdrawn and brought back at another time, when the government's total agenda as it applies to employment standards was before us, not only as legislators but for the people of Ontario as well.

Of course I'll be voting in favour of the government's recommendation to withdraw this section. It's a very contentious one, as everyone knows. Even though it was withdrawn by the minister at the time of her talking here at committee, many groups spoke to us at length about this section. I hope the government listened to that and will bring forth something that's meaningful for the people and the workers of Ontario when it does indeed go into its full review. But we really do believe this Bill 49 should have been part of a bigger parcel, not to have employment standards discussed in a piecemeal way.

The Chair: Any further comments? Seeing none, I'll put the question. Is it the favour of the committee that section 3 carries?

Mr Christopherson: I'd like to request a 20-minute recess.

The Chair: Mr Christopherson, I wonder if I might ask you — it's certainly your right to do that. I've just been notified that the government caucus is about to do

what we indulged your caucus to do, at 4:30. I wonder if, in light of that, even for this one, you would consider instead a seven-minute adjournment so that this can be disposed of and the government members could then seek a similar recess to allow them at least 20 minutes in their caucus to debate the issue that your caucus debated earlier this afternoon.

Mr Christopherson: I hear what you're saying and I want to be equally cooperative, but I would suggest we do it the other way and make it a 27-minute break. That way, I'm not losing anything and you're still getting your opportunity.

The Chair: I asked the clerk whether that was an option, and I'm informed that I have to put the question 20 minutes after —

Mr Christopherson: We can't move that by unanimous consent, clerk?

The Chair: If it's two separate things you're requesting right now, a 20-minute recess for the vote and then, if the committee agrees, a subsequent seven-minute recess, that could be done.

Mr Christopherson: Why don't we just agree to reconvene at — what time will you be back? Just pick a time. I'm fine with that.

The Chair: Mr Baird?

Mr Baird: Ten minutes to?

The Chair: Is there any further comment? If there is none, the committee will stand recessed till 4:50.

Mr Baird: Have you put the question?

The Chair: I did put the question.

Mr Christopherson: Is that enough time for you guys? Are you going to do this in 15 minutes?

The Chair: I see a suggestion of 5 o'clock as well.

Mr Christopherson: That's what I was thinking. If you want to come back at 5, that's fine with me. Come back at 5 and take the vote.

The Chair: Is that agreed? Okay, the committee stands recessed until 5 o'clock.

The committee recessed from 1622 to 1656.

The Chair: I call the meeting back to order. The question has been put. All those in favour of section 3? Opposed? Section 3 is defeated.

Any amendments to section 4?

Mr Baird: For the same reasons as I gave for section 3, the government recommends that the members of the committee vote against section 4 of the bill.

The Chair: Any further comments? Seeing none, I'll put the question. All those in favour of section 4? Opposed? Section 4 is defeated.

Any amendments to sections 5 through 19 of the bill? Seeing none, I'll put the question. Is it the favour of the committee that sections 5 through 19 carry? All those in favour? Contrary? Sections 5 through 19 carry.

Any amendments to section 20 of the bill?

Mr Baird: I understand I have to read the entire amendment into the record?

The Chair: Yes.

Mr Baird: I move that subsection 64.5(6) of the act, as set out in section 20 of the bill, be struck out and the following substituted:

"Powers of arbitrator

"(6) An arbitrator, a board of arbitration or the Ontario Labour Relations Board acting under section 133 of the

Labour Relations Act, 1995, may make the following orders when determining a grievance alleging a contravention of this act or failure to comply with it:

"1. Any order that an employment standards officer is authorized to make under subsection 13.1(14) or section 45, 48, 51, 56.2, 58.22 or 65.

"2. An order that a referee is authorized to make under subsection 69(2) or 70(2). However, an order under this paragraph may be made only if the grievance alleges that subsection 33(2) has been contravened or that an act, agreement, arrangement or scheme is intended to defeat or defeats the true intent and purpose of this act either directly or indirectly.

"Same, directors of employer

"(6.1) If a director of the employer to whom the collective agreement applies is liable under part XIV.2 for wages owing under the agreement, an order authorized by subsection (6) may be made against the director. However, no order may be made against a director unless he or she has been given reasonable notice of the arbitration proceedings and an opportunity to participate in them.

"Restriction re directors

"(6.2) An order shall not require a director to pay an amount or take or refrain from taking an action under the collective agreement that the director could not be ordered to pay, take or refrain from taking under the act in the absence of the collective agreement."

The Chair: Thank you, Mr Baird. Any comment on the amendment? Seeing none, I'll put the question. All those in favour of the amendment?

Mr Christopherson: Chair, I have to ask for a 20-minute recess.

The Chair: Mr Christopherson has requested a 20-minute recess. The committee will stand recessed for 20 minutes.

The committee recessed from 1701 to 1721.

The Chair: The question has been put. All those in favour? Contrary? The section carries.

Mr Christopherson: Did you call the vote?

The Chair: I did. Are there any further amendments to section 20 of the bill?

Mr Baird: I move that subsection 64.5(9) of the act, as set out in section 20 of the bill, be struck out and the following substituted:

"No review

"(9) The refusal to issue an order authorized by subsection (6) is not subject to review under section 67. An order authorized by that subsection is not subject to review under sections 67 or 68.

"Notice to director

"(9.1) The arbitrator, board of arbitration or Ontario Labour Relations Board shall give a copy of his, her or its decision to the director.

"Service on directors of employer

"(9.2) Subsections 58.26(2) and (3) do not apply with respect to the service of an order on a director of the employer."

The Chair: Any comments? Seeing none, I'll put the question. Is it the favour of the committee that —

Mr Christopherson: I request a 20-minute recess, Chair.

The Chair: Okay. The question has been put, and Mr Christopherson has requested a 20-minute recess. The committee will stand recessed for 20 minutes, and from this perspective it looks like the committee will reconvene at 5:47.

The committee recessed from 1723 to 1743.

The Chair: The question having been put, all those in favour of the amendment? Contrary? The amendment carries.

Any further amendments to section 20?

Mr Baird: I move that section 20 of the bill be amended by adding the following section to the act:

"Arbitration re related employers

"64.6(1) This section applies if, during an arbitration concerning the enforcement of the act under section 64.5, an issue arises as to whether the employer to whom the collective agreement applies and another entity are one employer under subsection 12(1).

"Restriction

"(2) The arbitrator, arbitration board or Ontario Labour Relations Board shall not make a decision concerning the issue arising under subsection 12(1)."

"Notice to director

"(3) The arbitrator, board or Board shall notify the director that an issue under subsection 12(1) has arisen in the arbitration.

"Exception

"(4) The arbitrator, board or Board shall not give notice to the director if the arbitrator, board or Board determines that there has been no contravention of or failure to comply with the act in any event.

"Complaint

"(5) The notice to the director shall be deemed to be the filing of a complaint under the act by the persons who initiated the arbitration.

"Other matters in dispute

"(6) When giving notice to the director, the arbitrator, board or Board shall advise the director of any decisions made concerning the other matters in dispute.

"Scope of order

"(7) An order relating to the complaint shall not vary any decision of the arbitrator, board or Board concerning the other matters in dispute. Nor shall a decision on a review under section 67 or 68 do so.

"Amount of order

"(8) An order relating to the complaint may be made for an amount greater than is permitted under subsection 65(1.3) or less than is permitted under subsection 65(1.5).

"Same

"(9) Subsection 82.3(1) does not apply with respect to an order relating to the complaint.

"Same

"(10) If it is determined that the employer and another entity are one employer, the order relating to the complaint shall not require the entity to pay an amount or to take or refrain from taking an action under the collective agreement that the entity could not be ordered to pay, take or refrain from taking under the act in the absence of the collective agreement.

"Knowledge of the director

"(11) For the purposes of subsections 67(2), 82.1(1) and 82.2(1), the relevant facts shall be deemed to have

first come to the knowledge of the director on the date on which he or she receives the notice.

"Effect under other acts, etc

"(12) A determination under subsection 12(1) that the employer and another entity are one employer does not make them one employer for the purposes of any other act or a collective agreement."

The Chair: Is there any comment on this amendment?

Mr Christopherson: A question: Given that we don't have an analysis of the amendments that are presented, could the parliamentary assistant explain to me what effect this has in terms of what it's correcting and how it will work?

Mr Baird: This is an issue, since it's of a highly technical nature, I would refer to Ron Saunders and John Hill, to my immediate right.

Mr John Hill: I'm sorry, there was one word I didn't hear in your question, so I'm not sure exactly what the question is.

Mr Christopherson: I'm just looking for an explanation of what the amendment does.

Mr Hill: The bill requires that where a unionized employee has a complaint, it be dealt with through the grievance process rather than through the ministry enforcement procedures. However, this amendment, in a situation where in the grievance an Employment Standards Act-related employer issue is raised, the arbitrator cannot make a finding on that issue; instead, the arbitrator would have to notify the director of employment standards that an issue concerning a related employer has arisen in the grievance, and the director of employment standards would assign it to a ministry employment standards officer to make a determination on the related employer issue.

The officer would be bound by any findings the arbitrator had made on any non-related employer issues and the officer would then either issue an order or not issue an order, according to his determination.

Mr Christopherson: Just further, what would have been the result if this amendment hadn't been made?

Mr Hill: Because the bill did not address specifically whether or not arbitrators would have the authority to issue orders against related employers or allegedly related employers, it would not be clear whether or not they could deal with that issue. It could be argued either way. The difficulty would be that related employers would not normally be considered to be parties to the collective agreement; therefore they might not be within the jurisdiction of the arbitrator to deal with. This amendment would make it clear that the arbitrator does not have the authority and that the related employer issue would have to be dealt with by an employment standards officer.

Mr Christopherson: It's certainly ironic that the government put forward that the whole purpose of Bill 49 was to streamline things and clarify, yet the government, in its rush to ram Bill 49 through at the end of the last session, would have created confusion, as a result of their own bill, that wasn't there before, therefore in effect doing the opposite of what the government had said they were going to do, which, I will continue to make the case, is all the more reason why the government, without having to be forced, should have recognized the importance, not only in terms of serving democracy but in good lawmaking, to have public hearings and allow an opportunity for people to comment. Even if they don't comment directly on these things, raising other issues affords an opportunity to review and look more closely, whether it's at the staff level, at the legal level or at the political level.

I want to make that case again as clearly as possible so that in the future, when we're dealing with occupational health and safety legislation, when we're dealing with WCB legislation, all these things that affect workers directly, in particular their rights, this government doesn't have to be pushed again into holding public hearings, that they recognize the importance and offer at the outset a responsible, credible period of time to travel around the province and hear input on those pieces of legislation.

I'm hoping, if the parliamentary assistant can offer me that assurance now, it would certainly make my day. If not, at the very least I urge the members to please recognize it isn't always just about politics; it oftentimes has a lot to do with good lawmaking, to take the time necessary to look at these pieces of legislation.

The Chair: Any further comment on the amendment? Seeing none, I'll put the question. Is it the favour of the committee the amendment carry?

Mr Christopherson: Can I have a 20-minute recess?

The Chair: Seeing that it is four minutes to 6 and that it would take us beyond 6 o'clock, the committee stands recessed and the question will be put promptly at 3:30 Monday, next week.

Mr Baird, do you have a point of order?

Mr Baird: If we vote on this now, just for the sake of remembering what we've voted on, since it's just been read and explained, we could adjourn right after we vote on this rather than spending 30 seconds voting on it at the beginning of Monday's session.

The Chair: We'd need unanimous consent, Mr Baird. Seeing that there is not, the committee stands recessed until 3:30 promptly, by the clock on the wall in the committee room, next Monday.

The committee adjourned at 1752.

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Substitutions present / Membres remplaçants présents:

Mr David Boushy (Sarnia PC) for Mr Chudleigh
Mr Gary Fox (Prince Edward-Lennox-South Hastings / Prince Edward-Lennox-Hastings-Sud PC) for Mr Murdoch
Mr Tom Froese (St Catharines-Brock PC) for Mrs Fisher
Mr Michael Gravelle (Port Arthur L) for Mr Lalonde
Mr Morley Kells (Etobicoke-Lakeshore PC) for Mr Maves
Mr John O'Toole (Durham East / -Est PC) for Mr Carroll

Also taking part / Autres participants et participantes:

Mr John Hill, solicitor, legal services branch, Ministry of Labour

Clerk / Greffier: Mr Douglas Arnott

Staff / Personnel: Mr Avrum Fenson, research officer, Legislative Research Service
Ms Laura Hopkins, legislative counsel

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Lundi 30 septembre 1996

**Standing committee on
resources development**

**Comité permanent du
développement des ressources**

**Employment Standards
Improvement Act, 1996**

**Loi de 1996 sur l'amélioration
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENT

Monday 30 September 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Lundi 30 septembre 1996

*The committee met at 1531 in committee room 1.*EMPLOYMENT STANDARDS
IMPROVEMENT ACT, 1996LOI DE 1996 SUR L'AMÉLIORATION
DES NORMES D'EMPLOI

Consideration of Bill 49, An Act to improve the Employment Standards Act / Projet de loi 49, Loi visant à améliorer la Loi sur les normes d'emploi.

The Chair (Mr Steve Gilchrist): We continue clause-by-clause deliberation on Bill 49. When we left off last week, a motion had been put to the floor. Just to remind all the members of the committee, we were on section 20 of the bill. It was government motion 6-LAH.

All those in favour of the motion? Contrary? The motion carries.

Are there any further amendments to section 20 of the bill? Seeing none, I put the question: Is it the favour of the committee that section 20 —

Mr David Christopherson (Hamilton Centre): Whoa. Just a question, a comment on it before you move to a vote. You're about to move a vote on section 20 complete, am I right?

The Chair: Yes, sir.

Mr Christopherson: Before you do that, could I ask staff questions?

The Chair: Yes, sir.

Mr Christopherson: We've dealt with three major amendments and I've asked some questions along the way with each of them and have had a fairly detailed response on the last part of it. I would appreciate, though, for the record if the parliamentary assistant or staff would provide an overview now of the effect of all the amendments in section 20 that have now been made by this committee, if you would, please.

Mr John Hill: I will go through them subsection by subsection, which would probably be the easiest way to explain.

Subsection 64.5(6) gives the arbitrator — I'll not repeat "board of arbitration or Ontario Labour Relations Board" each time — the power to make any "final" order that an employment standards officer could make. It also gives the arbitrator the power to make the type of order that a referee appointed under section 69 of the act could make in two situations. Those are where there's a violation of part X of the act alleged. That is the part of the act that deals with discrimination in benefit plans. It also allows the arbitrator to make that kind of order in a case where the allegation is that the employer is engaged in a scheme or an arrangement that defeats the intent and purpose of the act. This subsection would make it clear

that the arbitrator does not have other sorts of interim or preliminary powers that an employment standards officer has under the act.

Subsection (6.1) gives the arbitrator the authority to make orders against directors of the employer in the case of a corporate employer. The reason for that is that it would not otherwise be clear that the arbitrator would have that power, because a director is not a party to the collective agreement. So there may be some question, without this particular subsection, whether that kind of order could be made.

There's a restriction on that in subsection (6.2), and that simply provides that the arbitrator can't make any order against the director for something that's purely a collective agreement violation and not a violation of the Employment Standards Act in the absence of the collective agreement.

The next set of amendments in section 20 starts with subsection 64.5(9). Subsection (9) simply makes it clear that the arbitrator's decision is not subject to appeal to an adjudicator or a referee under the act. The remedy, if there is one, would be for the union or employer who is dissatisfied with the arbitrator's decision to seek judicial review.

Subsection (9.1) requires the arbitrator to give a copy of the decision to the director of employment standards and subsection (9.2) provides that subsections (2) and (3) of section 58.26 of the act, which deal with service of an order upon a director, do not apply. These provisions, if there's a dispute about service, allow an appeal to an adjudicator, and since the intention here is to exclude the adjudicator/referee system from ESA complaints that are dealt with through the grievance process, it's necessary to exclude those two subsections.

Section 20 of the bill also creates a new section, 64.6. Subsection (1) is simply the application section, which says that everything else in this 64.6 applies where an issue arises in a grievance arbitration as to whether an entity is a related employer under the Employment Standards Act.

Subsection (2) provides that the arbitrator cannot make a decision on a related employer issue. Rather, if such an issue arises during the grievance arbitration, the arbitrator is required by subsection (3) to give notice to the director of employment standards.

Subsection (4) creates an exception to that. If the arbitrator determines that whether or not the entity was a related employer would be a purely academic issue in that there wouldn't be any violation of the Employment Standards Act regardless of what way the finding went on that issue, the arbitrator in that case is not required to give notice to the director.

In the case where notice is given, it's deemed to be a complaint filed under the act; that's in subsection (5).

Subsection (6) requires the arbitrator, in his notice to the director, to advise of any decisions he's made on non-related employer issues.

Subsection (7) indicates that any finding on a non-related employer issue made by the arbitrator is binding. That would be binding both on the employment standards officer who investigates the complaint and also on an adjudicator or referee in the event that there's an appeal from the officer's decision.

Subsection (8) indicates that the maximum order provision in the act and also the provision that would allow for the making of a regulation prescribing a minimum amount for orders do not apply in the case of this type of procedure.

Subsection 82.3(1) is the provision that requires complaints, generally speaking, to be made within six months of when the wages fall due. That, again, is excluded by subsection (9).

Subsection (10) indicates, similar to the provision we spoke of a moment ago concerning directors, that if there's an order made against a related employer, that order can't require the related employer to be responsible for anything that would be a pure collective agreement violation, by which I mean a violation of a collective agreement that would not be a violation of the Employment Standards Act in the absence of the collective agreement.

Subsection (11) is meant to key in with the limitation provisions of the act which create certain time limits that are based upon when certain facts come to the knowledge of the director of employment standards, and basically what subsection (11) does is deem facts to have come to the director's knowledge in the case of this type of a procedure when the arbitrator gives notice.

Subsection (12) finally provides that any determination made under this process involving a related employer issue does not have any effect of making the other entity one employer for purposes of any other act or for purposes of the collective agreement. That's it.

The Chair: Any further questions, Mr Christopherson?

Mr Christopherson: No.

The Chair: Seeing none, I'll put the question.

Mr Christopherson: Can I have a recess?

The Chair: After I put the question is the time you can ask for a recess. I'll put the question to the committee: Is it the favour of the committee that section 20, as amended, carry?

Mr Christopherson: I request a 20-minute recess.

The Chair: Mr Christopherson has requested a 20-minute recess. The committee stands recessed for 20 minutes.

The committee recessed from 1541 to 1602.

The Chair: I call the meeting back to order. The question's on the floor.

All those in favour of section 20 carrying, as amended? Contrary? Section 20 carries.

Any amendments to section 21?

Mr Christopherson: I would move that subsection 65(1.2) of the act, as set out in subsection 21(1) of the bill, be struck out and the following substituted:

"Order

"(1.2) The employment standards officer may order the employer to pay the wages owing to the employee to the director in trust. The employment standards officer may also order the employer to pay an amount determined in the prescribed manner to the director for administrative costs.

"Administrative costs

"(1.2.1) The administrative costs shall be determined with reference to the complexity of the process and the length of time that could be required to obtain payment under the order."

Can I comment now?

The Chair: Do you wish to speak to this?

Mr Christopherson: Just briefly, we in the NDP think this goes a long way to the issue of ensuring that there's a fuller recovery possible for services that are rendered in terms of getting money that's owed from the bad-boss employer. If this language were to become the law, it would empower the branch and the ministry to go after something closer to the full amount, rather than the current act which states that it's the greater of \$100 or 10%.

We heard from many presenters that this was a major impediment to showing that public sector employees can provide a cost-effective service if you give them the legislative tools to allow them to do just that and, in our opinion, negates any arguments the government may have about having to move to private sector collection agencies because they're more cost-effective. The fact of the matter is that they're only more cost-effective because they will not pay wages and benefits near the same, and that's where the profit margin comes from. At the end of the day it's going to be the employee whose rights have been violated who is going to pay that cost.

This amendment would allow us to maintain decently paying jobs in our economy as well as ensure that the cost of the work performed on behalf of the vulnerable employee is paid for by the bad boss.

Mr John R. Baird (Nepean): Just with respect to that amendment, I think the amendment would establish even more regulations. We'd have to establish regulations to justify this amendment. I think what this amendment is — and certainly the member has every right to bring it forward — is just basically against the spirit of the idea of privatizing the collection service that is provided within the branch.

I guess we know that ministry resources are not exclusively the determinant on the success in collections. We know that after \$42-million worth of cuts by the previous government, where it cut the Ministry of Labour by more than one third of its budget, they were still only collecting 25 cents on the dollar. We know that when the previous government laid off almost 200 employees at the Ministry of Labour, we were still collecting the same 25 cents on the dollar. I think it goes to what Leah Casselman referred to in her brief as the lack of pecuniary interest, which is the whole reason why we would call on professionals with decades of experience in collections to undertake that function on behalf of workers in this province.

Mr Christopherson: We heard evidence — it's in the Hansard; it's in the record there to be looked at by

anyone — from people who are in the collection agency, as a result of questioning by me in different communities, that pointed out a number of things. One is that the professionalism that the private sector collection agencies would bring to the task would not be diminished in any way if their talents were taken inside the public sector. That is there on the record and I've asked that question in that plain a fashion. The expertise and professionalism is there, whether it's outside in the private sector or inside in the public sector, so any argument that it can only be found in the private sector is merely a lack of will on the part of whatever party is in government at the time.

There's also ample evidence, and part of it from your own committee members, Mr Parliamentary Assistant, that much of the money that is outstanding in terms of your saying only 25 cents is being collected, is from bankrupt employers that you're not going to see collected by private collection agencies. We have evidence to that effect because I asked them that question point-blank, "If you suddenly had these cases, would you be able to get anything more from a bankrupt employer than the government's been able to get?" and the answer was a resounding, "No, we can't."

So yes, I thank you for the way you've phrased your opening comments. I very much brought this motion forward because it is opposed to the spirit of what your government's brought forward. We don't think there's rationale for it other than your ideological commitment to privatizing everything in government that you can and your political agenda that it will be your pals and cronies who will benefit from the privatization of any of these services and certainly not the working women and men and their families this legislation is there to protect.

Mr Joseph N. Tascona (Simcoe Centre): I'd just like to say that what we're dealing with here is hardly related to what my friend across the way Mr Christopherson is talking about. What we're talking about here is at the stage when the employment standards officer issues an order and the wages that are outstanding as a part of that order, plus essentially an administrative fee which is going to have to be borne by the employer, essentially enforcing their administrative, legal right to make an appeal. There's no reason to make it more onerous an aspect than it already is because the money that is owed to the employee is going to be paid to the director in trust 100% on the dollar.

What we're talking about here is something that isn't found in other remedial jurisdiction. It's essentially an amount in addition to what is already owed. So certainly the procedure that's been in place for quite a while is not being changed to any great extent and the worker is protected.

It's not a disincentive. I think if we don't watch it we're going to have a disincentive for the employer even to enforce their own legal rights to deal with a standard that's being enforced by an employment standards officer. I think what we're looking at here, on its face as the provision under Bill 49, is acceptable, and I wouldn't agree with the motion put forth by the third party.

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The Chair: Any further comments? Seeing none, I'll put the question. Is it the favour of the committee that the amendment carry? Contrary? The amendment is defeated.

Any further amendments to section 21? Seeing none, I'll put the question. Is it the favour of the committee that section 21 carries? All those in favour? Contrary? Section 21 carries.

Section 22: Are there any amendments to section 22?
Mr Baird: I move that the bill be amended by adding the following section:

"22.1 Subsection 66(1) of the act is amended" —

The Chair: Excuse me, Mr Baird. This actually is a new section. This isn't an amendment to section 22. We have to carry section 22 first, and that makes it a new section.

Mr Baird: I apologize.

The Chair: That's fine. Are there any amendments to section 22 itself?

Mr Christopherson: Mr Chair, would you explain that once more, the procedural ruling you just made.

The Chair: This is actually a new section.

Mr Christopherson: Right.

The Chair: So we would have to pass section 22, for one reason because this is not an amendment to section 22 that Mr Baird is proposing but, secondly, the matter he's discussing will arise from the successful passage, presumably, of section 22.

Mr Christopherson: I'm with you.

The Chair: Seeing no amendments to section 22 itself, I'll put the question. Is it the favour of the committee that section 22 carries? Contrary? Section 22 carries.

Mr Baird: I move that the bill be amended by adding the following section:

"22.1 Subsection 66(1) of the act is amended,

"(a) by striking out 'clause 65(1)(a)' in the fourth line and substituting 'subsection 65(1.1)'; and

"(b) by striking out 'clause 65(1)(b)' in the seventh line and substituting 'subsection 65.1(1).'"

The Chair: Do you wish to speak to the amendment?

Mr Baird: This amendment simply deals with correcting cross-references due to an earlier amendment.

The Chair: Any further comments? Seeing none, I'll put the question. Is it the favour of the committee that the amendment carry? Contrary? The section carries.

Are there any amendments to sections 23 through 27 of the act? Seeing none, is it the favour of the committee that sections 23 through 27 —

Mr John O'Toole (Durham East): May I just make a point of order or ask a question of the Chair? Not to be frivolous or anything, but I can't understand why, when we're amending just technical languaging errors and cross-referencing errors for clarity in the bill, the opposition and third party would not support those technical amendments.

The Chair: That's not a point of order.

Mr O'Toole: No, but I'd just like to go on record. It seems contradictory if they're actually clarifying the language. It isn't essentially political in that respect.

Mr Christopherson: Mr Chair, I'll just comment once briefly, because this isn't worth going too far with. But, for the record, this is a government that had to be dragged into public hearings, and that member who just spoke knows that better than most. This is a government that refused to negotiate when this clause-by-clause would take place. They unilaterally used their own

powers to override our concerns and you didn't follow through on the agreement we had in the first place. If, for one minute, any part of this government thinks we're going to cooperate with the dismantling of the Employment Standards Act, either in its whole or in part, it has another think coming.

The Chair: Thank you both.

Moving back to sections 23 through 27, are there any amendments? Seeing none, I'll put the question. Is it the favour of the committee that sections 23 through 27 carry? Contrary? Sections 23 through 27 are carried.

Section 28 of the bill: Are there any amendments, comments?

Mr Baird: I move that subsection 73.0.2(4) of the act, as set out in the section 28 of the bill, be amended by striking out "Clauses 22(a) and (c) of the Collection Agencies Act do not apply" and substituting "Clause 22(a) of the Collection Agencies Act does not apply."

The Chair: Do you wish to speak to the amendment?

Mr Baird: No.

The Chair: Any comments? Seeing none, I'll put the question. Is it the favour of the committee that the amendment carry? Contrary? The amendment carries.

Any further amendments to section 28?

Mr Christopherson: I move that subsection 73.0.3(2) of the act, as set out in section 28 of the bill, be amended by striking out "75 per cent (or such other percentage as may be prescribed)" in the fourth, fifth and sixth lines, and substituting "all."

Chair, you will know that in every community we travelled in across the province there was outrage that the legislative target or ceiling would be 75% of the money that's owed to an employee by a bad boss. Anything less than setting out in legislation that the purpose is to collect 100%, particularly when you're privatizing the final service that will collect this, is merely sending out a signal to the collection agencies, your privatized friends, that 75% is your target if you want to move these cases and these files through quickly.

We have evidence from questioning that collection agencies will make more money if they can move through files quicker. Therefore, this sends out a message that 75% is the starting point and there are procedures to go less than that. We believe that the starting point ought to be nothing less than 100% and only in the most extreme situations and with valid explanation in writing by the minister should anything less than 100% be acceptable. This amendment would give effect to the argument I've just made.

Mr O'Toole: I take 73.0.3 as being very clear that under the act, if the person to whom the money is owed agrees in writing to the compromise or settlement — each person has his own unique circumstances, and they do not have to agree. In that case, if it was for their own financial requirements or whatever, there is an opportunity for the person who is owed the money to be involved in the decision. I think it's fair and reasonable.

Mr Christopherson: I understand the argument. It makes a great deal of sense, sitting here in a committee room safely ensconced in the Legislative Assembly. The fact of the matter is, we heard evidence across the province that the reality is that the people most likely to

be hurt by bad bosses are often people whose first language is not English, who do not have a good handle on the legislative and legal process, and that it would be very easy for them to be concerned, even feel pressured. In fact, your legislation, by saying the collection agencies can't pressure or create a fraudulent situation, merely points out the reality that that could happen.

We're very concerned that there'll be people who will agree to things because they're maybe coerced, but certainly at the very least unsure of themselves, don't know what their rights are, or are so financially destitute that they'll take as much as they can get if it's cash in the hand rather than the long legal process that may face them — if that argument's put to them — if they didn't take this money. At the end of the day, we believe there will be people who will accept and sign agreements that give them less than they're entitled to merely because they don't know, and the rules don't assist them and the legislation doesn't assist them and this government won't assist them, that they can get 100%, which is what they're entitled to.

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Mr Baird: I appreciate the member's opposition to privatization. There is obviously a difference of opinion there, and I don't want to debate the pros or cons of that with respect to this section.

I think it's important to note that the section with respect to the 75% is not a new law, is not a new way of doing things. This is something that has been done within the ministry for a number of years, regrettably, by the current Minister of Labour and her two or three immediate predecessors. Regrettably, there are circumstances where you cannot get 100%. We want to get 100% for every individual we can. Of the collections — it goes back to an amendment that was made earlier — 21% of the cases involve bankruptcies; 3%, I believe, are insolvencies.

Beyond that 24%, obviously with these bad bosses, these deadbeat bosses, not living up to the Employment Standards Act usually isn't their only problem. They're usually bad business people, facing more financial circumstances which impede the workers' ability to get their money. We learned in Ottawa from two or three presenters that sometimes you have to go to the well and get your half a pail of water while there's still any water to get. These are going down very quickly.

The motive for putting 75% in the act with respect to the collection agent's function — right now that function is undertaken within the ministry; it's a function that's undertaken by this government, a function that was undertaken by the previous minister. At times, regrettably, the worker may choose to settle for less than 100 cents on the dollar. There are occasions when a company could be facing bankruptcy in the coming weeks and that worker may know they'd better get their money out of there as soon as possible.

This 75% is there to have a final point of contact between the ministry to ensure that reasonable precautions have been taken. It is put there, believe it or not, to protect the worker. That was the motive behind putting it there. It just codifies what is the practice of this Minister of Labour and of previous ministers of labour, particular-

ly Bob Mackenzie. Regrettably, you have to do this from time to time. No one is happy when a worker receives less than everything they're entitled to.

Mr Tascona: The reality of the work situation is that not everyone is a perfect employer. If they were, we wouldn't have remedial legislation. The reality is that employment standards officers currently have settlement powers to make the best deal they possibly can to get the worker some wages. They do a very good job at that in terms of trying to get some resolution to the matter. The intent of the language that's being put forth serves no real purpose. Practically speaking, it's just greater paperwork and will essentially saddle the collectors with doing paperwork rather than collecting.

The yardstick that's been put out there — and I think the parliamentary assistant has ably put it — at 75% is a yardstick that should be respected and can be worked with, and the director has the final say in terms of the final resolution of the matter. I believe what the government's put forth is realistic in terms of the workplace environment we're facing today.

Mr Christopherson: I would reject all the arguments that are being made in the context of this government's misleading of people right from the beginning with the name of the act, to call this an improvement. There's nothing in here that improves anything for the most vulnerable workers of this province. To suggest that somehow you're making it better by taking a current practice — and I don't dispute that there may be current practices similar to that, but to say you're going to codify that at the same time you're privatizing the work, and say that's an improvement or it's in the context of an improvement, to me is misleading at the very least and is a deliberate attempt to camouflage what some collection agencies may do.

The fact of the matter is, when you've got people whose main purpose is to close a file — and we have that on the record. I have asked those agencies. At the time, I pointed out that that's not an evil unto itself. They're entitled to run a business and make a profit. That's why they exist. The people who are out there negotiating these deals are working for an employer whose purpose is to close the file, and the more files they close, the more money they make. That is a very different motive than a public servant whose sole motive is to get 100% or as close to that as possible for the employee and not question how cost-effective this is. For that employee, if they're at a minimum-wage level, you can imagine what their standard of living is, and \$100 or \$500 may make the difference between whether they have a Christmas or not.

Yes, the law up until now provided that public servants, in a not necessarily cost-effective way, went out motivated to get as much money as they could for that employee, and then and only then would they close the file. Your government is putting the target at 75% and then hiring out what will, I have no doubt, be your friends who are going to get these contracts. Their motivation is going to be, "Get as much as I can, get the file closed and move on, because that's how I make money." That's the world we're entering into as a result of the changes you're making.

That's why I'm putting forward an amendment that would at least in some part put a requirement to look at the wronged employee first rather than leaving all this to the vagaries of the marketplace, which says, "The more money you make, therefore the better job you must be doing." In this case that's not true, and that's what we're trying to do with this amendment.

The Chair: Any further comment? Seeing none, I'll put the question on the amendment. All those in favour of the amendment carrying? Contrary? The amendment is defeated.

Any further amendments to section 28?

Mr Christopherson: I move that subsection 73.0.3(2) of the act, as set out in section 28 of the bill, be amended by striking out "the director" in the second-last line and substituting "the minister."

This is further to the arguments I've laid out for why we moved the previous amendment, and there's one more to follow. All of this is to try to offset the damage that privatizing this important service for the most vulnerable workers in Ontario will do, recognizing that we still believe this is a bad move, but if you're going to do it, at the very least these three amendments would have helped.

After we said that you should in legislation be targeting for all the money, not 75%, which my previous amendment did, this amendment says that if there's an exception to that 100%, it's not the director who can do it; it's now got to be the minister. The minister must take personal responsibility for allowing anything less than 100% of money owed to be acceptable. This amendment would make that the law as it pertains to ministerial responsibility in this regard.

The Chair: Further comments? Seeing none, I'll put the question. All those in favour of the amendment carrying? Contrary? The amendment is defeated.

Further amendments to section 28?

Mr Christopherson: I move that subsection 73.0.3(2) of the act, as set out in section 28 of the bill, be amended by adding at the end "and gives written reasons for his or her decision to approve it, explaining why in the circumstances it is reasonable to agree to an amount that is less than the total owing under the act."

The purpose of this, as I've said, is the third part of trying to mitigate some of the damage you will do to the rights of the most vulnerable workers by privatizing collection. First of all, we said that 100% of the money, laid out in law, is to be the target. Second, we said anything less than that must be the minister going on the hook for that decision, not just a director. Third, we're saying it's not enough, as the law now says, only to approve in writing. We think there ought to be an explanation in writing of why in these circumstances anything less than 100% is acceptable to that minister.

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The Chair: Further comments? Seeing none, I'll put the question. All those in favour of the amendment carrying? Contrary? The amendment's defeated.

Further amendments to section 28?

Mr Baird: I move that section 73.0.3 of the act, as set out in section 28 of the bill, be amended by adding the following subsection:

"Apportionment of payment

"(3.1) The amount paid shall be apportioned in the prescribed manner among all persons to whom money is owed, including the director and the collector."

I think this just follows through with discussions we've had at great length.

Mr Christopherson: I want to ask a few questions about this one. This may come up in other areas, so if I overlap, I leave it up to you, Chair, to give me the discretion, or if you want to rein me back, I'll deal with it in a broader discussion of 28.

I want to be 100% clear on the process we followed in terms of what constitutes final amounts and what's going to be apportioned beyond what goes to the employee. I'll give the parliamentary assistant a situation where someone's owed wages, for whatever purpose — benefits, overtime. An employment standards officer is brought in. There's deemed to be a violation of the act. There's an order for, let's say, \$1,000. It's not being paid. The order's not being respected. It's handed over to a collection agency. The collection agency now steps into the situation. When they negotiate an amount, are they negotiating an amount that includes all the administrative costs for the government and fees for the collection agency on top of the \$1,000 as the starting point? Would that be the way you'd do it? You would go for, say, \$1,250 from that employer?

Mr Baird: Yes. To clarify that with a dollar number — this obviously came up a number of times during the process — let's say the order was \$1,000. As previously discussed this morning, there would be a 10% administration fee, which would be in that case \$100, and for argument's sake let's say the collection agent's fee is 20% —

Mr Christopherson: That's low.

Mr Baird: Let's say 30%.

Mr Christopherson: Still low.

Mr Baird: The collection agent would then seek \$1,400; \$1,000 for the worker who's owed and been cheated out of their money, \$100 for the ministry's administrative fee, and \$300 for the fee of the collection agent. This did come up a number of times during the hearings where there was some discussion and concern about exactly how that worked out.

Mr Christopherson: I know it did, and it was less than clear at the end of the day, which is why at this stage I want to be crystal clear. Let's then further assume for the sake of argument that the collection agency doesn't believe it can collect \$1,400. In their professional opinion \$1,400 is not achievable, for whatever reason, but \$750 is. What then happens? Let's assume the director agrees that \$750 is the most we're going to get out, because they're going down or for whatever reason; there could be a whole host of them. The collection agency and the officials in the ministry believe that \$750 is the most they're going to get. Whether that's right or not is not the point. For the sake of argument, they're going to get \$750. What happens to that \$750?

Mr Baird: I'll apportion it maybe at \$700 just for mathematics' sake.

Mr Christopherson: Is it going to be 10% and 30% off the \$750?

Mr Baird: If the collection agency feels that in this case it's less than 75%, that the company which has been issued an order and has not paid or appealed within 45 days, for example, is in imminent bankruptcy, they can try to get as much money now before that company crashes and burns —

Mr Christopherson: Whatever. Let's just say they think that should be collected.

Mr Baird: If they could get \$700, for example, of \$1,400, obviously it would be apportioned in the same way, on a percentage basis. The collection agent wouldn't get their full fee, we wouldn't get the full 10% of the \$1,000, and the worker would get the same apportionment. For example, if it was \$700, they would be entitled to 70% of the money they were able to collect.

Mr Christopherson: You see, therein lies our major concern. I see you getting some advice from staff; I'll give you a chance to add to your answer if you want. Maybe you need a recess? No? I'm just trying to help.

Mr Baird: Obviously, we're going to have some experience in this process with respect to operating with a collection agency as we go through the process. This would basically establish that we could establish a regulation in terms of an apportionment. For example, with the 10% administrative fee for the ministry, our experience will tell us whether that is appropriately waived. Obviously, though, the collection agency fee would be apportioned the same as the worker's entitlement to their money.

Regrettably, though, when a company's about ready to go bankrupt, the question is, we want to get as much money as we can get before they do. We know that these types of employers are deadbeats, and if they're deadbeats with employment standards, they're probably deadbeats with their creditors. Do we want to try to get as much money out of them before they do crash and burn and there's no money to be had? I don't think anyone is pleased in these instances. The question is, how can we do the very best we can for the worker? The apportionment would be along the same percentage terms.

Mr Christopherson: Where we differ very dramatically is your blind belief that by privatizing this, somehow that's going to guarantee more money collected. I think the evidence we've heard across the province is to the contrary, that indeed if you actually hired the professionals from the private sector into the public sector to properly train staff and had enough staff to do the job and they had the legal tools they need to do the job, it could be done inside the ministry and it wouldn't be 30% of this money that's going to pay for the private collection agency.

That is why you heard representative after representative after representative saying that you're not only privatizing an important public service, but you're going to make the victim pay for it. If you'd had that same professional, trained as they were in the private sector, in the public sector — and there's evidence to show that can be done; the private collection agency experts admitted that themselves — if you had those properly trained staff going out there into the workplace, none of that \$750 would be going towards paying the privatized service.

That's why we will claim to the end that what you are doing is making the victim pay, and it'll be private sector buddies of yours who will benefit, and it'll be people making less money than public sector servants, who make at least a decent wage — which helps our economy, contrary to what you believe, that it hurts us to have decent-paying jobs. That privatized worker will be making less money with probably less protection. Hell, they'll need the Employment Standards Act, in some instances, as much as anybody else. At the end of the day, their wages and the profit of that corporation are being paid by the worker who's being ripped off. That's why you heard the outcry you did, and why you'll continue to hear from us.

Mr Baird: I would just indicate that I agreed with Leah Casselman in her presentation when she said it was an issue of pecuniary interest, of personal interest. That, in my judgement, is the determinant of success. We heard from a number of collection agencies, particularly in Ottawa, as you'll recall, that made that exact point. But I appreciate that there's a point of debate, and that's reasonable; people can differ.

1640

Mr Christopherson: Does that mean that the only reason you're in politics is because of the paycheck you're given?

Mr Baird: No. I'm saying that if an individual would make a profit and be financially better off, they would more likely have more success with respect to collecting funds. It's unfair, in my judgement, to compare a salaried public servant who is going to make the same amount of money regardless of their success while also undertaking employment standards investigations. Rather, if you put the service out to people with 20 or 30 years' experience who have a financial reason to benefit — that's why, for example, salespeople operate on commissions; it gives them more of an incentive to undertake their function. I think the exact issue Leah Casselman brought forward in her presentation is with respect to a pecuniary interest.

Mr Pat Hoy (Essex-Kent): I want to understand this clearly. You say that in cases where 100% of the dollars are not going to be available — you cite bankruptcy, but it could be just an unwillingness to pay, I suppose. We used the example of \$1,000 for the worker, \$100 to the ministry and \$300 to the collector. You can't get that money or it's deemed that that money can't be garnered, so we used a figure of \$700. The apportionment between the worker, the ministry and the collector would be dealt with by regulation, to decide what percentage each person would get of the amount less than 100% of what's owing?

Mr Baird: Obviously, there would be an issue with respect to what the collector's fee is. That would have to go to, I presume, a competitive bid type of situation, where the ministry would contract the services of a collection agency and at what fee they would collect. The clear idea would be to apportion it along the same ratio of \$1,000, \$300 and \$100.

Mr Hoy: So the collector would suffer a loss of equal percentage to the employee?

Mr Baird: Exactly.

Mr Christopherson: To close the argument on privatizing and the motivation of people, I want to say for the record that I think one of the problems with this government is that they truly seem to believe that if you're in the public sector, somehow you are less of a worker than someone who is in the private sector, just by virtue of that designation, which is why I used the example of the parliamentary assistant being in this for his paycheck. I don't believe that. I happen to believe, even though I disagree with him, that he's here for the right reasons. I think he wants to help people. He's just a poor, misguided soul who doesn't quite know how to do that.

But the fact that he's a public sector employee, which he is, doesn't negate the motivation he brings to this job, whether he was on commission or not. You do a real disservice to people and you deny them the opportunity to be professionals. There are public servants in this room right now, and you're insulting them by suggesting that they would only do a better job if they were paid on commission or had some financial incentive, rather than the fact that they are people who are committed to doing a good job because it helps people and that they bring professionalism to that job. I happen to believe that. Clearly, you and your members don't.

We are saying that if, instead of thinking you have to have a financial motivation, you left the professional motivation of those public servants in the collection agency and allowed proper billing to the bad-boss employers who should pay the full amount of doing this and don't take away from the amount workers get, particularly if it is going to be less than 100%, you really would be making an improvement to the system, but you're not.

Everything you're doing here is as an apologist for your massive privatization, which is just your ideology at work. You even have the baldfaced audacity to call it improvements when you know, John, in your heart of hearts that this is not an improvement to these standards. You know that, yet you come in here and carry the can, in this case I guess for a parliamentary assistant's fee — maybe you've lost your argument there. But the fact of the matter is that nobody can go through this and look at this privatization and see this as anything other than paying off your corporate pals by giving them a chance to make money in areas where it should be a public service, and off the backs of the most vulnerable. That's what's most disgusting.

Mr Baird: I certainly don't believe that every single public service should be privatized. There are many, many fine examples where public servants do a tremendously effective job for the taxpayers. My father was a public servant until he retired, my stepmother is a public servant, my sister is a public servant, and they do very good work. There are public servants right across this province and right across this country who do an excellent job. My point is that in some instances there are clear examples where the private sector could better undertake those functions, and I guess there's just a fair disagreement.

Mr Christopherson: It doesn't hold up. It didn't hold up in any community across the province, that argument you just made.

Mr Tascona: I'd rather focus on the amendment rather than a discussion on something that is totally irrelevant to what we're trying to accomplish here. The employment standards officers' focus should be on enforcing the act, not on the collection functions which were forced upon them by the previous government. The amendments with respect to the union role in the process for employment standards are long overdue, so what essentially is happening here is that the non-union area is being given the resources it deserves. What we're dealing with here, in essence, are the delinquent employers the employment standards officer really does not have the time to go around and chase. We're putting it in the hands of professionals in terms of an area in which they have expertise to do what has to be done to give greater protection to the worker.

The apportionment of payment amendment I certainly support. It just makes sense and it should be dealt with in a prescribed manner. I can support it.

Mr O'Toole: I first want to make very clear on the record that the first intent is to get 100% of what has been the court order for the employee. I believe the enforcement activity is what we're trying to concentrate the resources on to help the most vulnerable and give them the clear mandate to enforce the regulations through the investigation.

But I might point out what we're adding here: If the original order was \$1,000 — do your arithmetic — and we settle for 75% after we've added the \$400 of administration and collection fee, 75% of \$1,400 is \$1,050, so the employer is still going to end up paying more if they don't conform to the order. If you look at it in balance, the employer is best to pay the order without any collector being involved. All he's going to end up paying is the administration fee, the 10%, and he can avoid the extra charge. Look at it: Why wouldn't the collector be encouraged to get 100%? He would get a 25% raise by collecting all the money.

The Chair: Any further comments? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? The amendment carries.

Are there any further amendments to section 28? Seeing none, I'll put the question: Is it the favour of the committee that section 28, as amended, carry?

Mr Christopherson: Questions on that motion?

The Chair: Questions on the motion? Do you mean a comment on section 28 in general?

Mr Christopherson: Yes.

The Chair: Oh, please.

Mr Christopherson: That's the motion, right? The motion is to accept section 28?

The Chair: Yes.

Mr Christopherson: I'm asking questions on that. It was mentioned by the parliamentary assistant that there will be at least one new regulation created as a result of one of the amendments within section 28. Would the parliamentary assistant or the staff advise how many new regulations will have to be created as a result of section 28? Is it just the one?

Mr Hill: I want to be sure I give you the right answer. It is just one. The effect of the motion — the apportionment scheme — would be done in a single regulation. It

could end up being a fairly simple or a somewhat more complicated regulation, depending on exactly what kind of apportionment the government had in mind. I don't know what is contemplated at this point. As I say, it could be a fairly simple scheme, it could be somewhat more complicated, but it would be done in a single regulation.

1650

Mr Christopherson: Is there a possibility this regulation would generate any paperwork for anybody within the ministry or is the parliamentary assistant comfortable guaranteeing that there'll be no paperwork required on anybody's part as a result of some directive imposed within a regulation?

Mr Baird: There would certainly be paperwork to close a file if an unpaid order goes to a collection agent and is collected. We'll obviously have to have some paperwork to close the file because we'll have done our job for the worker.

Mr Christopherson: It maybe belies your point all along that without question fewer regulations and less red tape make for better government. The fact of the matter is that there are occasions when it does make sense to regulate and there are occasions when it makes good sense, even if it means generating paperwork, to protect the rights of the people you claim to be caring about when you do it. Would you agree?

Mr Baird: I agree.

The Chair: Any further questions? Seeing none, I'll put the question again: Is it the favour of the committee that section 28, as amended, carry? Contrary? Section 28, as amended, is carried.

Any amendments to section 29? Seeing none, I'll put the question: Is it the favour of the committee that section 29 carry? Contrary? Section 29 is carried.

Are there any amendments to section 30 of the bill?

Mr Christopherson: I seek the assistance of the Chair, but I believe the amendment I circulated is in order at this time in terms of its numerical placing.

The Chair: Yes, it would be the next one in sequence.

Mr Christopherson: Therefore, I move that section 30 of the bill be amended by adding the following section to the act (before section 75.1):

"Posting re rights of employees

"75.0.1(1) Every employer shall post in the employer's workplaces a summary of the rights of employees under this act and a notice setting out the address and telephone number of the director's office nearest the workplace.

"Same

"(2) The summary must contain such information as may be prescribed.

"Same

"(3) The summary and notice must be posted in a prominent place in the workplace in such a manner that they may be read by all of the employees in the workplace."

We heard from an overwhelming number of people who said that part of the difficulty of vulnerable workers enforcing their rights is that they don't know what they are. There are numerous occasions where government backbenchers are on the record as talking about the need to educate both employers and employees in order to

ensure that people's rights are being met. There were even employers, as I recall, who felt that posting the rights in the workplace was a good idea for workers.

I would like to hear very clearly why something like this would not be supported by the government, because if it doesn't pass now it means the government majority overruled it. All this says is — and we already do it for health and safety — that if we recognize that people not knowing their rights is one of the major reasons why their rights aren't enforced, and if we've heard from worker representatives and employers themselves, as well as government backbenchers, that educating everyone as to the Employment Standards Act and the protection and rights that are contained therein is an important part of making sure people's rights are upheld, what on earth would prevent this government from at least making one real improvement in an act that's been given that title but that does nothing of the sort, other than in a couple of minor areas?

For once, make a real change. Show that you actually listened to what people had to say. I can't imagine a legitimate argument that would prevent the government backbenchers from asserting their right as members and not just puppets on a string being told when to vote and when not to, to say, "I supported a motion that said the rights of vulnerable workers had to be posted in the workplace," and be prepared to stand up and defend that you did that for vulnerable workers.

Mr Baird: In the current Employment Standards Act, section 75 reads, "The director may require an employer to post and keep posted a notice relating to the administration or enforcement of this act or the regulations in a conspicuous place where it is most likely to come to the attention of the employees, and the employer shall post and keep posted any such notice." It's in the current act. There's obviously a little bit of a difference.

Having said that, the minister has no major problem with respect to posting the act. It's something that, in principle, she supports. With respect to this amendment, however, she feels two things. First, in subsection (1) of your amendment it deals with setting out the address and telephone number of the director's office nearest the workplace. Obviously, there would have to be a differentiation with respect to union and non-union places of employment. Union places of employment would obviously be dealt with in a different manner. Second, would there be an exemption with respect to small business? What about home-based businesses? Would someone be required to post it in their home and what not? For those two reasons, it will be put off to the full review, but in principle the minister has no violent objection and wishes to consult more on this issue with the full review.

Mr Tascona: Certainly, posting of a statute in terms of the requirements for employees is something that occurs where there are violations found under the act for human rights and also the Ontario Labour Relations Act. That's something that's not new and that's certainly designed as a remedy against employers that are really deserving of being made aware of the rights that employees should have.

Practically speaking, this is a bureaucratic nightmare. I could see an approach of saying: "All employers, you

have to register with us and we also would like you also to do an audit. You may need to know all the languages you have within your workplace because we're going to have to make sure that everybody can understand this." I think that may result in an invasion of someone's privacy in terms of whether they want to indicate what language they have or an employer saying, "These are the languages we think people speak based on what their name is." How far do we go with this type of an approach? I think it's a typical approach that the third party used when it was in government, to boss people around, especially employers, saying, "You do it our way or take the highway."

If it's used for an education purpose — I asked the question many a time dealing with associations that represented many employers and they said they do educate their members in terms of these programs. I know the government takes a role with respect to making sure the employment standards officers would educate the employers within the area they service. It's not a matter of education; it is a matter of having the remedies, and it's certainly within the act right now to make sure that where there have been violations the employer is duly noted and the employees are aware of their rights when you're dealing with a problem employer. This basic amendment presumes that all employers are bad, and I can't accept something like that because they're not. But I'm not in favour of a bureaucratic registry system in terms of a posting. We're dealing with a system that hasn't been addressed for many years and it's not a system that I feel has broken down in terms of the rights and the standards that are there. I think what we're hearing here is an overreaction to a problem that can be dealt with intelligently. So I can't support a motion such as this.

1700

Mr O'Toole: I'll try to be brief. I would first like to go on record as encouraging the education of the public at large. I'm wondering if Mr Christopherson is interested in listening. A fellow by the name of Tim Eye appeared before the public hearings. He represents the Durham Labour Council. I've spoken with him since, and I know my friend Jerry Ouellette has as well. We've talked about the importance of career training today. We've talked about the cooperative education in our high schools, the revamping of post-secondary. Even in a main academic curriculum like Law and Society, today many of the employment standards officers visit the schools, when invited, and conduct information sessions.

When I ask myself about the percentage of bad bosses we hear about, it would appear to me that they are in the minority and that they're in violation probably of other particular statutes, and yet we're going to penalize every employer, as if they're bad bosses, with another layer of red tape and bureaucracy, which we're all trying to avoid, and so the real outcome is that you're penalizing the good boss.

I would throw it up to you, Mr Christopherson, that the unions do make a very good point: It is an important part of their mandate to stand up for all workers. I think they'd better spend their money on the campaign to educate people with the right and correct information and statutes, rather than some of the rhetoric we'll hear on

October 25 and onward. Technically, Gord Wilson and the CAW and the Steelworkers and the whole group should definitely focus on their mandate of educating all workers about their rights. We all want to stop bad bosses. I think it will get done. The message will get out just by these hearings alone.

Mr Christopherson: Which you guys didn't want to have in the first place.

Mr Jerry J. Ouellette (Oshawa): I understand the member putting this amendment forward. However, I think the way it's worded, for example, in the business I was in in the past, dealing with conventions and trade shows, it would cause a real nightmare to find out all the information and having people brought on and having a posting in each place. A presentation I had within the past two weeks on the Internet, and people working out of their house, working the Internet, would cause some difficulty there in the way it would work. I understand and I agree that the need for communication of the bill is necessary, but I think the way it's worded here would cause more difficulty than good.

Mr Christopherson: I appreciate the thoughtful, constructive comments of Mr Ouellette. Some of you I'll just say at least had the decency to go and do what you had to do as government backbenchers and either asked questions or said nothing. I separate that very much from those who bloody well know what this act is and are prepared to act as the apologists for the people who crafted this, because I know damn well none of you had much say in it and you just have to live with yourselves down the road as to why you did what you did.

Given what you said, Mr Ouellette, I do respect the fact that I think you're one of those who has tried to listen as much as possible, although you're still Tory and you're going to be there for them, but I think you did try to listen and I appreciate your comments. Mr Baird's I think were fair to the point of at least representing one side. What I would ask of the parliamentary assistant is, if there's enough sincerity and agreeing in principle, will you agree, because we have the time, to table my amendment and allow your ministry officials to work with my staff and see if we can't come up with language that is acceptable and make it a part of this bill? Would you be prepared to do that?

Mr Baird: As I mentioned, the minister is pleased to give very serious consideration to this issue. Having said that, this is not something that was contained in the first reading of the bill. It's not something we consulted a terrific amount about across the province.

Mr Christopherson: No, because it's a real improvement.

Mr Baird: Having said that, if you are genuinely interested, which I certainly believe you are, we're very happy to put this over to the full review and to set up an opportunity for you to talk to the government about it, because it's not an amendment that we take as a hostile one.

The question is, how could it best be done? An additional concern I would have is that I wouldn't want anyone to say: "Look, the government's getting serious. They're going to get tough on deadbeat employers. They're going to require these deadbeats to post the act." So all those people, all those seamstresses we saw here

sitting in this very room who were paid \$2 an hour, they won't have to worry because the employer who was paying them \$2 an hour will of course post the act saying he's required to pay them \$6.85. In and of itself, I have that concern that it would create some sort of false consciousness as to what the real result of it would be. It certainly couldn't have a negative result, but I think, in and of itself, it might suggest that we've tried to find a response to a comprehensive review through a very minor amendment that I just don't see being the full answer to the problem.

We're very happy to put it over to the full review, and if you'd like to make any form of presentation in that review, we'd be very happy to have you participate. And I'm genuine in that.

Mr Christopherson: No. I'm still going to go on the assumption I think you're trying to be helpful. I would much prefer to see it passed now. I don't think it's nearly as difficult. I think there's time for us to work together, but I can count and at the end of the debate, regardless of who was the best debater, the will of the government will prevail. I understand that.

Could I ask then as a sign of good faith that the committee merely pass a motion that would refer this NDP amendment to the minister's process for consideration?

Mr Baird: If you could get this here by 6 o'clock, I would.

Mr Christopherson: Well, we shall see. We're not doing too bad right now, are we? So far I'm in a good mood.

Mr Baird: I'm not complaining at all.

Mr Christopherson: No. Would you agree to have the committee — and I'm open to the wording; I'm not playing games — but have it referred from this committee by a majority, what I hope would be a unanimous vote referred from here, this NDP amendment to the broader review being conducted by the minister?

Mr Baird: For consideration?

Mr Christopherson: For consideration.

Mr Baird: Absolutely.

Mr Christopherson: Then I would so move, Mr Chair.

The Chair: Actually there's a motion on the floor already, Mr Christopherson, so I can't take your motion.

Mr Christopherson: I think a motion to refer is in order on a main motion. The motion is that this be referred to the minister's review. That takes it off the agenda of this committee and it goes off elsewhere. That's what referral motions do.

Mrs Barbara Fisher (Bruce): You should take it first, then the motion.

Mr Christopherson: That's fine.

The Chair: Actually there's no mechanism to table. In committee, as you're aware, Mr Christopherson —

Mr Christopherson: How about I withdraw it and then refer it?

The Chair: Technically speaking, it should be made at the conclusion of the proceedings on the bill itself.

Mr Baird: We'd have no objection to that.

Mr Christopherson: Okay. I'll wait till the end and then I'll move the motion. I'd ask you to call me at the appropriate time to do it.

The Chair: I will do that.

Mr Christopherson: Thank you.

Mr O'Toole: Has he withdrawn this amendment?

The Chair: No, no. We're now about to deal with the amendment before you to section 30 of the bill, section 75.0.1 of the act.

Mr Christopherson: I was distracted.

The Chair: I'm just telling Mr O'Toole we are dealing with your amendment now for a vote.

Mr Christopherson: Right.

The Chair: Any further comments on the amendment? Seeing none, I'll put the question. Is it the favour of the committee that the amendment carry? All those in favour?

Mr Christopherson: Sorry, Chair. Is this the one we just dealt with that you said is coming up at the end?

The Chair: You had made this motion already. We must dispose of this motion before we can deal with anything else in the committee.

Mr Baird: I guess you wish to withdraw it.

Mr Christopherson: Yes. Rather than have it voted down, I'd be willing to withdraw, Chair.

The Chair: Withdrawn?

Mr Christopherson: In the interest of referring it to the end, yes.

The Chair: Thank you. Are there any further amendments to section 30 of the bill?

Mr Christopherson: I move that the bill be amended by adding the following section, 30.1.

The Chair: Excuse me, Mr Christopherson. That's actually an addition. That will be a new section, so we have to dispose of section 30 first.

Mr O'Toole: Section 30.1 is a new section.

The Chair: That will be considered a new section, so not an amendment to section 30 itself.

Mr Christopherson: Okay. You'll allow it after this vote then?

The Chair: Oh, absolutely. So the question is, are there any further amendments to section 30 itself? Seeing none, I'll put the question. Is it the favour of the committee that section 30 carry? Contrary? Section 30 is carried.

Mr Christopherson: I move the bill be amended by adding the following section:

"30.1 The act is amended by adding the following section:

"Just cause required

"76.1(1) An employer shall not dismiss or discipline an employee without just cause.

"Same

"(2) Subsection (1) does not apply during a probationary period of a maximum of six months when the employer first employs the employee."

The Chair: Do you wish to speak to the motion?

Mr Christopherson: My comments are that I think most people would be very surprised to learn that they don't currently have the right to be fired for just cause only. Most people believe that it's either a common law or codified that you can only fire someone if you have a just cause. I'm not aware of a collective agreement that exists, and I've had a fair bit of experience in this area, where that isn't an automatic that an employer cannot fire someone without just cause. It's a fundamental part of

virtually all collective agreements, the same as seniority is. Then it spells out a process for determining whether or not someone should be allowed to be fired.

1710

The fact of the matter is that, again, if the government wants to improve the bill and truly give improvement in the rights that workers have, this is a tried and true approach that works. It's a fundamental part of every collective agreement. Every employer who deals with a unionized workplace knows that they cannot unilaterally fire someone, and at the end of the day it's not just a question of whether they be sued or not for wages, but the fact is that under that collective agreement, that employee can be put back in their job and made whole, 100%, over and above the wages and benefits that they may be owed.

If you really want to make an improvement in this law, then give all workers the right, the very simple, fundamental right that you can't be fired except for just cause, and then if it's found that you were fired inappropriately, you can be put back to work and given your job back. Right now, except in very exceptional and special circumstances, you can't. You can be given money, you can be given all different kinds of awards, but you cannot be given your job back by a judge, for instance. This would allow a worker to have the same fundamental right as any kind of unionized employee. I'd be very interested in hearing why the government might be opposed to giving such a fundamental right that most workers believe they have anyway at this time.

Mr Baird: I'd just ask the Chair for guidance on this. While this amendment establishes a new section of the bill, I think the issue contained in the amendment is something that wasn't addressed on the first reading of the bill and it's fair to say it certainly does lie well beyond its size and scope. Could I ask for some guidance as to whether or not it's in order?

Mr Christopherson: Can I comment before you rule, Chair? I just want to advise that even if for some reason you don't think it technically fits, I believe it does and would make that argument if you rule that way, but I would also argue it certainly is part of the larger part of the bill which says this is an improvement to the Employment Standards Act. Clearly, what I'm moving here is indeed an improvement and therefore falls under the purview of the full title of the bill.

The Chair: Thank you. Give me one moment to consult with the clerk and legislative counsel.

Mr Christopherson: John, you can always vote it down. Why do you have to play technicalities?

Mr Baird: I don't think we should get into any broad discussion in terms of what components would be good to augment section 76 of the bill, which currently deals with reprisals —

Mr Christopherson: I think you're just afraid to make the arguments.

The Chair: Thank you for both of your submissions. As legislative counsel reminds me, the test to which we must submit any new section is whether a person in the community at large would have a reasonable expectation that a topic being introduced would have fallen under the purview of the act. I guess, in the broadest sense, perhaps

you could argue that this is an employment standard. On the other hand, to the best of my knowledge, there's nowhere else in the bill before us today that we deal with hiring and firing, and I think if I had to come down on either side I would have to rule that this is out of order because it introduces a topic which is not within the scope of the bill before us today, Mr Christopherson.

Mr Christopherson: My comment to that would be that I obviously disagree. I believe there were enough presenters who talked about the need for a just-cause clause to legitimize my introducing this amendment at this time. I would have thought, given the attempted evenhandedness that I think you've brought to the job to this moment, recognizing there's an overwhelming majority of government members here, that if there were a doubt in your mind, you would have given it to the opposition in our minority position and at least have allowed me to make the argument, knowing I would have been overruled and outvoted by the majority anyway. I think this is outside the usual process that you've attempted and it feels like a partisan ruling, but as you are the Chair, I'll respect it.

The Chair: Mr Christopherson, I'm sorry you feel that way. As I say, I took direction from the precedents known to people with far more experience than I. I note that the clerk has been doing this for 19 years, and legislative counsel has considerable experience as well.

Yes, it is a judgement call. You are free to seek the unanimous agreement of the members on this committee whether they would like it introduced. I don't wish to prejudice that. That is always your option. But I really think that in the truest sense of the topics that have been the subjects of debate — and I would be the first to agree with you, we had many extraneous topics and many related topics brought forward, but I think the mere fact that one or more presenter may have mentioned this does not relieve us of the obligation of seeking a broad commentary on a topic as potentially significant as the one you're introducing today. Having not been in the original bill, I'd be more comfortable. You are free, however, to ask for unanimous consent.

Mr Christopherson: I would just note that since this is a real improvement, it certainly is out of step with any amendments that this government has attempted to do. I would, of course, in the effort to turn over every stone, ask for unanimous consent, but given that it was the parliamentary assistant who asked for the ruling in the first place — but I'll go for it. I would like unanimous consent to be allowed to introduce this amendment for debate.

The Chair: Is there unanimous consent from the committee?

Mr Christopherson: The parliamentary assistant is shaking his head no.

The Chair: No. Sorry, Mr Christopherson, there is not unanimous consent.

Mr Christopherson: I don't lose; it's the workers of Ontario who are losing.

The Chair: Excuse me one second, Mr Christopherson. Just to save you some reading, I am advised that the next submission, your 1-LAH Alt-2, is out of order for two reasons. It's beyond the scope of the

bill, but number two, it's one thing to add a section; it's another thing to add a subsection. This amendment would propose to open up a section which was not proposed to be amended in the original bill. That is an absolute in terms of being proscribed as being an acceptable amendment.

Mr Christopherson: I hear you. I still would maintain the argument that both of these are within the scope of the long title, given that these are improvements, and again would ask for the only tool available, which is unanimous consent to at least introduce it, knowing that you guys can overrule it anyway. At least allow it to be debated.

The Chair: Mr Christopherson has asked for unanimous consent to introduce his motion 1-LAH Alt-2. Is the committee prepared to grant unanimous consent?

Mr Christopherson: The parliamentary assistant is vetoing it again.

The Chair: Yes. Sorry, Mr Christopherson. There is not unanimous consent.

Are there any amendments to section 31 of the act? Seeing none, I'll put the question. Is it the favour of the committee that section 31 carries? All those in favour? Contrary? Section 31 carries.

Section 32 of the bill: Are there any amendments?

Mr Baird: I move that the French version of subsection 82.1(3) of the act, as set out in section 32 of the bill, be amended by striking out "Aucune instance ne peut être" in the first line and substituting "Une instance n'est pas."

The Chair: Do you wish to speak to the amendment?

M. Baird : Non, c'est seulement une correction de la version française aujourd'hui.

The Chair: Merci. Are there any further comments or questions? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? The amendment carries.

Any further amendments to section 32? Seeing none, I'll put the question. Is it the favour of the committee that section 32 carries, as amended? All those in favour? Contrary? Section 32, as amended, is carried.

Are there any amendments to sections 33 through 35 of the bill? Seeing none, I'll put the question. Is it the favour of the committee that sections 33 through 35 of the bill carry? All those in favour? Contrary? Sections 33 through 35 are carried.

Shall section 36, the short title of the bill, carry? All those in favour? Contrary? Section 36 is carried.

Shall the long title of the bill carry? All those in favour? Contrary? The long title of the bill is carried.

Shall Bill 49, as amended, carry? All those in favour? Contrary? Bill 49, as amended, is carried.

Shall Bill 49, as amended, be reported to the House? All those in favour? Contrary? Thank you. Bill 49 will be reported to the House.

If we can move back to Mr Christopherson's original motion. If you wish to craft something or would you like the clerk to —

Mr Christopherson: No. I think we can do this fairly easily. I would like to move that the NDP motion 2-LAH be referred to the review being —

Mr Baird: "Comprehensive."

Mr Christopherson: — well, the review being conducted by the Minister of Labour and be considered at that time.

Mr Baird: “Comprehensive improvements to the Employment Standards Act.”

The Chair: Thank you. Do you wish that done in the format of a letter from the Chair?

Mr Christopherson: Assuming that I get a unanimous vote to do that, yes, that would be appreciated.

The Chair: So that would be the format you would appreciate?

Mr Christopherson: Yes.

The Chair: Everyone understands the motion Mr Christopherson has proposed?

Mr Baird: Could it just be read again? I'm sorry.

Mr Christopherson: I move that the NDP motion regarding posting of Employment Standards Act rules as contained in 2-LAH be forwarded to the minister for consideration during her broader review of the Employment Standards Act.

Mr Baird: I would just indicate I'd support that.

Mr Tascona: Just for the record, the referral is just strictly for something that the minister is going to review. This, to me, is so broadly based and purely to ensure that fairness is done with respect to the process that we discussed before, I can support this, but only in the sense of exploring because it is so broad and needs to be subject to much more scrutiny to really understand what is being attempted here by the third party.

Mr Baird: I think what Mr Christopherson is trying to do is to ask that this issue be considered in the comprehensive review. I'm sure I can speak on behalf of the minister that she has absolutely no problem whatsoever with considering this issue.

The Chair: Any further comments? All those in favour of the motion? Contrary, if any? The motion carries.

Mr Christopherson: Was that unanimous, Chair?

The Chair: Yes, it was.

Mr Christopherson: Thank you.

The Chair: Thank you, Mr Christopherson, and thank you all for your assistance in this long process. The committee stands adjourned.

The committee adjourned at 1725.

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**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mr John O'Toole (Durham East / -Est PC) for Mr Carroll

Also taking part / Autres participants et participantes:

Mr John Hill, solicitor, legal services branch, Ministry of Labour

Clerk / Greffier: Mr Douglas Arnott

Staff / Personnel: Mr Avrum Fenson, research officer, Legislative Research Service
Ms Laura Hopkins, legislative counsel



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Journal des débats (Hansard)

Mercredi 16 octobre 1996

**Standing committee on
resources development**

**Comité permanent du
développement des ressources**

**Environmental Approvals
Improvement Act, 1996**

**Loi de 1996 sur l'amélioration
du processus d'autorisation
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENT

Wednesday 16 October 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Mercredi 16 octobre 1996

*The committee met at 1533 in committee room 1.*ENVIRONMENTAL APPROVALS
IMPROVEMENT ACT, 1996LOI DE 1996 SUR L'AMÉLIORATION
DU PROCESSUS D'AUTORISATION
ENVIRONNEMENTALE

Consideration of Bill 57, An Act to improve the Efficiency of the Environmental Approvals Process and Certain Other Matters / Projet de loi 57, Loi visant à améliorer l'efficacité du processus d'autorisation environnementale et concernant certaines autres questions.

The Chair (Mr Steve Gilchrist): Seeing quorum present, I ask the committee to come to order on this our first day of hearings on Bill 57. The first order of business today will be to accept the report of the subcommittee on committee business. Every one of the members should have a copy in front of them there.

Mr Jack Carroll (Chatham-Kent): I move to approve it.

The Chair: Mr Carroll has moved adoption of the subcommittee report. Any discussion? Seeing none, all those in favour of accepting the subcommittee report? Contrary? It is deemed to be carried.

MINISTRY OF ENVIRONMENT AND ENERGY

The Chair: That leads us then right into our opening statements on the bill. Again, by agreement of all three parties, there'll be 10 minutes in opening comments from the minister and then 10 minutes in response from each of the two opposition parties. With that, Minister, welcome to the committee.

Hon Norman W. Sterling (Minister of Environment and Energy): Thank you very much, Mr Chairman. I appreciate the time the committee is giving to me today to address it on Bill 57. My parliamentary assistant, Doug Galt, will be assisting you through some other parts of the proceedings, but I will be leading off and will be available to him to answer any questions you might have with regard to amendments which committee members might like to put forward.

I'd like to put out a few words about why the government is bringing this bill before the Legislature. The context of the bill, and the spirit of the new legislation, is the urgent need to restore common sense and efficiency to government operations.

For more than two decades, Ontario has been a leader in Canada and other parts of the world in terms of the environmental protection legislation it has. Way back in 1976, for example, Ontario was the first Canadian province to introduce environmental assessment legisla-

tion. Since then, other jurisdictions in this country have followed our lead. The fact is that Ontario has an outstanding track record for its commitment to protecting the quality of its air, water and other resources. We have earned that record by passing effective legislation; by putting in place laws that are relevant, tough and fair.

Protecting the environment is one of our government's highest priorities. We also believe that the province's environmental protection legislation must be efficient, effective and workable. As it stands now, many of our procedures and protocols have proliferated to the extent that they no longer work well together towards desired results. We need to fix this. Protecting our environment is, of course, the whole point of what my ministry does. We need more rationalized, clear and efficient means of achieving that result.

I'd like to outline the objectives of Bill 57. This bill represents an important step in this process. The bill is designed to accomplish four main objectives:

First, Bill 57 will make the environmental approvals process more efficient by getting rid of unnecessary duplication and red tape and the considerable costs they involve. The bill achieves this improvement in efficiency without in any way compromising the high standards of environmental protection that are currently in place.

Second, Bill 57 contains provisions to close a government agency, the Environmental Compensation Corp, or the ECC. The ministry is getting out of the compensation business by this move.

Third, Bill 57 repeals the Ontario Waste Management Corporation Act. This will bring down the curtain on one of the most expensive wastes of time and money in provincial history.

Fourth, Bill 57 consolidates the Ministry of Environment and Energy's ability to charge user fees for some of the services it provides to recover the administrative costs of providing them.

I would like to talk this afternoon about these four objectives in more detail. As I mentioned, one of Bill 57's most important provisions is to improve the efficiency of Ontario's certificate of approval process. The bill will deliver a process with clear, precise rules, and the changes we are proposing will affect only those activities that have predictable environmental effects.

Under the terms of the existing provincial legislation, a certificate of approval is required for any activity that might result in any emissions or discharge in the natural environment. That's any activity at all and any discharge at all. Technically, we could require certificates for venting public washrooms or even for hot dog vendors.

Under the existing statute, every new restaurant opened in Ontario must apply for a certificate of approval when

it installs a ventilating fan. Water treatment plants needing a new pump must obtain a certificate before they can replace that pump if it is not in fact identical to the pump being replaced. These applications involve considerable cost for the proponents, while ministry staff are required to review each application, with little result in terms of saving our environment from any hazard.

With a standardized approvals process in Bill 57, regulations can be developed specific to activities that they regulate. This means that certain classes of activities, people or things will be exempted from the certificate of approval process. Of course, the amendments will also enable conditions or rules to be attached to the exemption to ensure that all aspects of a project are covered off in terms of their potential to adversely affect the environment.

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We need effective environmental legislation in this province. To keep it effective, we need to amend it when it's faulty or when it ceases to make sense. After 20 years of experience with the environmental assessment process, for example, we know that there are many activities with predictable environmental effects and that those effects are relatively easy to mitigate. For these types of activities, Ontario developed the class environmental assessment process, which now accounts for something like 90% of all EA projects we handle each year. Class EAs have streamlined the approvals process for a wide range of activities. At the same time, they have ensured consistent protection for Ontario's environment.

Bill 57 brings the same kind of efficiency with the same high level of environmental protection to the process involved in obtaining a certificate of approval. Instead of spending considerable time and effort in, in effect, creating a customized regulation for each individual instance, a standardized approval can effectively be applied. This new mechanism will be used with common classes of activities with consistent and predictable parameters that we can identify.

In the debate during second reading of this bill, I heard some members opposite express the view that it is part of the government plan for environmental deregulation. That, quite frankly, is wrong. I would like to lay it to rest today. My job as Minister of Environment and Energy, and that of my staff, is to set standards for environmental protection in Ontario and to ensure they are being met. Governments are not in the business to prescribe in minute detail exactly how those requirements will be met. Government should not be in the business of micro-management.

For activities with predictable environmental effects, Bill 57 delivers a more straightforward approvals process, with rules that are clearer, more efficient and effective. The new process does not in any way alter Ontario's existing standards of environmental protection. The environment will be protected.

Regulations will be developed for those classes of activities that qualify for the new process. Those regulations will be developed with full consultation. Other activities will continue to be subject to the existing process.

When Bill 57 becomes law, industry, businesses and municipalities will have more flexibility to meet standards in innovative ways. But make no mistake, the same tough environmental standards that applied in the past will continue to apply in the future.

When we hear phrases like "environmental deregulation," it's important to distinguish between common sense and partisan sentiment, between reality and rhetoric. Improving the law is not deregulation, and streamlining the process to save time and money for industry, business, communities, taxpayers and your government does not constitute dismantling of Ontario's environmental legislation.

The second aspect of Bill 57 involves winding up the Environmental Compensation Corp. or ECC. Over the past decade, this corporation has cost us, the taxpayers, approximately \$3 million. That's over a period of 10 years at \$300,000 per year. In that same period, the corporation paid out about \$700,000 to 89 applicants, an average of about \$69,000 a year. You can see the inefficiency of this organization immediately. The operational costs outstrip the amount actually getting to the public by a ratio of four to one. This is not a responsible use of taxpayers' dollars.

We now have more than 10 years of experience with the spills bill. During that period of time the overwhelming majority of businesses in Ontario have demonstrated that they're willing and able and responsible for cleaning up the spills. The court system will remain the avenue for pursuing the rest. It is time for the government to get out of this business of providing compensation.

Winding up the corporation will in no way affect the important environmental safeguards that protect the public from the consequences of spilled materials. Ontario law in this area remains clear and unchanged. Part X of the Environmental Protection Act makes the owners and controllers of spilled substances responsible for the cleanup, restoration and compensation, regardless of who was actually responsible for causing the spill. The same legislation requires spills to be reported to the ministry and other relevant authorities. In this regard, Bill 57 will save taxpayers money, while delivering the same level of environmental protection they currently enjoy. We will be able to spend some of that money in actually cleaning up the problem.

I'd like to comment briefly on two other aspects of Bill 57: the repeal of the Ontario Waste Management Corporation Act and provision of a new cost recovery mechanism for my ministry.

I do not have a great deal to say about the Ontario Waste Management Corp. What can be said about pouring taxpayers' money into the endless studies and research that never produced any real results?

As the members know, the corporation had a mandate to solve our hazardous waste management problems, and it worked on that mandate for some 15 years. Ultimately, a site in west Lincoln was selected, and this was followed by a lengthy environmental assessment hearing, which was unsuccessful. The corporation's efforts over those last 15 years have cost us, the taxpayers, some \$145 million, but at the end of the day, the people have nothing to show for their money, or very little.

Bill 57 repeals the Ontario Waste Management Corporation Act. In so doing, it writes the final chapter in this corporation's history. It is the final formality required to tie up the loose ends.

I want to comment on one other aspect and one final aspect of Bill 57 this afternoon, and that is the provisions allowing my ministry to recover some of the administrative costs of the programs and services we deliver. The ministry has several existing legislative authorities that enable it to charge fees for services such as certificates of approval, examinations, licences, permits and copies of documents, plans and drawings. Bill 57 consolidates these authorities into one and allows the ministry further flexibility to recover the real costs from the specific recipients of our services.

The ministry will use this new authority to introduce fees to recover the costs of providing services such as generator registration and waste manifests. These systems, as some of you know, track hazardous and liquid industrial waste from generation to disposal. The fees we collect will help ensure that those who use these services will pay for them. As well, the fees will assist the ministry's efforts to recover some of our administrative costs, consistent with our business plan and the government's corporate direction in this regard.

To sum up, I'd like to remind you that Bill 57 should be considered in the context of our government's efforts to deliver services more efficiently and cost-effectively. Bill 57 offers environmental protection that is just as good or better, because we can concentrate now on the important things, than the protection we currently enjoy. Moreover, it offers significant savings of both time and resources for industry, business, municipalities and taxpayers.

The bill can be seen as part of the government's plan to foster the creation of new wealth and prosperity, new opportunities and jobs. By making our approach to environmental protection more efficient, we strengthen the competitive ability of our Ontario businesses to make Ontario a more attractive place for new investment and those great jobs that flow out of it.

Bill 57 eliminates unnecessary red tape and duplication, it streamlines the environmental approvals process, it gets the ministry out of the compensation business, it gets an unnecessary statute off the books and it expands the broad concept that those who use certain government services should pay for them.

I'm grateful for this opportunity to introduce to the members of the committee this bill this afternoon. I appreciate your attention, your work on this bill. I will listen to your comments and concerns over this bill and any proposed amendments you might have to this legislation.

The Chair: Thank you, Minister, for that overview. We appreciate you appearing before us here today. With that, we'll move to the official opposition for a 10-minute response.

Mr Pat Hoy (Essex-Kent): We Liberals have a number of concerns with this bill and I'm pleased that we'll have the opportunity to discuss with the witnesses some of our key concerns and questions. Our most important concern is, like so many other bills, we're

being asked to review and pass legislation that provides the Minister of Environment and Energy with sweeping regulatory powers, yet we are never provided with any of these proposed regulations at the time the bill is being discussed.

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With this bill, we're being asked to sign a blank cheque. Liberals demand to see which activities the government has proposed to exempt from the Environmental Protection Act before the bill is passed. The Minister of Environment and Energy has cut his budget by over one third, and the staff in his ministry has also been cut by one third. Is this bill being driven by the staff reductions?

With so few inspection staff left — for example, there is only one air quality inspector left for the entire province — will there be sufficient staff left in the ministry to adequately monitor environmental practices?

The certificate of approval process provided an important educational component for small businesses, for example, paint shops. Will small business be adequately informed of the new environmental standards they are expected to meet? In addition, MOEE has stated that it will have to rely on an already overstretched municipal education system for industries to help monitor their compliance. Will municipalities be given any additional resources by the province?

On the issue of eliminating the Environmental Compensation Corp, we question whether it should be wound down when it is so difficult to obtain private insurance. Has the government adequately examined means of streamlining and reducing the cost of administering the program before it scraps the entire program?

While we are focusing specifically on this bill today, our party will be relating the changes proposed in this bill to all of the other dismantling of the province's environmental regulatory powers and protections. We can't forget, when this minister says to trust him with these new policies, to give him this blank cheque, to exempt any person, thing, activity, contaminant, substance, waste, material, spill or any other material from any provision of the Environmental Protection Act, the Waste Management Act or other regulations, that this government has shown itself to be one that cares more about cutbacks than it does about the environment.

Finally, I'm pleased that there has been such a strong demand by witnesses to appear before the committee and express their views. I look forward to a good discussion on this bill.

Ms Marilyn Churley (Riverdale): I appreciate the minister taking the time to be with us today. Let me say in the few minutes I've got that I have a lot of trouble with the bill and I don't think it is as benign as the minister likes to say it is and put a very nice face on it. It's part of the mantra of doing more with less, which is not the fact here.

There are a number of issues that my Liberal colleague alluded to briefly, and we'll be getting into more details throughout the hearings. But because I have a very short time and the minister is here for a very short time, I want to tell him my major concerns and ask the minister

specifically if he is willing to accept amendments to these areas.

One is the collection of fees. I'm speaking directly to the minister here. Minister, I'd like to ask you, I believe you mentioned in the — you missed all my thank-yous for being here today. I do thank you for coming. I know ministers can do three things at once. Anyway, the fees that you referred to — and I generally support that the fees should be raised and that we should find other ways. I also believe in the concept of the polluter paying. I just wanted to ask you quite specifically, and let's try to keep our questions and answers short, because I only have 10 minutes, are you willing to accept an amendment that would expressly require that any fees paid under the EPA or OWRA should go into a specific fund or account administered solely by the MOEE and used exclusively for environmental protection purposes? This is not new; it's done in Alberta, I believe, and in other areas. Are you willing to accept such an amendment?

Hon Mr Sterling: I'd love to be able to accept such an amendment, but I don't think my Treasurer would allow me to accept such an amendment.

Ms Churley: Would you fight for that? Because it's not saying —

Hon Mr Sterling: I will talk to my Treasurer about it, but the whole notion of dedicated revenues in this government and in previous governments has never been accepted. You remember we had the old tire tax under the Liberals and it was called a tire tax, but it was not a tire tax; it was a tax which went into the general revenue fund and was spent for various and nefarious expenditures of the government. I don't hold out a lot of hope in changing the general overall policy of the treasury or Finance on this particular issue.

Ms Churley: Could I interrupt? Because I only have 10 minutes and I have a few other questions.

Hon Mr Sterling: Okay, sure.

Ms Churley: I will point out to you later that in fact the Ontario government has done it under, I think, Ag and Food — oh, no, the Ministry of Natural Resources, fees generated through parks. It's been done in Alberta and the feds, so it wouldn't be setting — I understand your concerns, but it may be possible to do this.

Another area that I have really big concerns about: It's been expressed that the permit by rule, as written to date, could imply that it could be anything. I know you said you don't mean it that way, but it's so ill-defined that anything, as it's written now, could come under it. When I asked the previous minister for a list of what would come under that, I wasn't provided with that list. I was given examples, maybe paint shops, dry cleaners, restaurants.

I have real concerns, for instance, about cumulative effects around even paint shops and dry cleaners and the fact that if it's permit by rule — a whole class given the permit by rule — the public will be shut out because it won't be announced or posted in any way. Therefore, communities will be shut out of that process. There's concerns about the cumulative effect.

My question to you today is, do you have the list available for us today of all of the activities which will be included in this permit by rule? Have you got the list for us today so we can put this into a context?

Hon Mr Sterling: I don't have a complete list, but you can find some of them in our regulatory reform document.

Ms Churley: Will there be more?

Hon Mr Sterling: We haven't really decided that. There will be a process, of course, that will be gone through in terms of them being posted on the regulatory registry through the Environmental Commissioner before they are put through or they would be regulated under a certificate of approval process.

Ms Churley: You don't have it today, though.

Hon Mr Sterling: I have a list here. I have a list of eight candidate activities which I'm quite willing to share with you and with members of this committee.

Ms Churley: Perhaps if you could leave that with us.

Hon Mr Sterling: I certainly will.

Ms Churley: But I just want to be clear that there will be others, but we don't know what they are yet. A process will be gone through to reach the others. Will there be public consultation around that?

Hon Mr Sterling: There will always be public consultation as you're moving into these areas, because you'll be consulting with people who are in the business and the people whom it will affect.

Ms Churley: Also the communities who have an interest and environmentalists; people who have an interest: Will they be —

Hon Mr Sterling: Absolutely.

Ms Churley: I also wanted to ask you about your hazardous waste program, which you don't have in fact. My biggest concern about the cancellation of the OWMC — and generally given that the activity finally was stopped through the end of the EA process, I understand the reasoning behind cancelling it. However, our government decided to use that corporation to continue to work on hazardous waste reduction and elimination plans, which is now at the OWMC.

That possibility for dealing with hazardous waste is gone. We put in place a whole series of programs and activities, some of which came under the OWMC, which is now gone. I again don't have time to get into them in these few minutes, but I'm just wondering what you're going to be doing. Do you have a hazardous waste program to replace the one that's gone from there and that had been cancelled by the previous minister?

While you're consulting on that, I have a few other areas.

Hon Mr Sterling: Perhaps I could have one of my officials, if you would introduce yourself.

Mr Bob Shaw: I'm Bob Shaw. The hazardous waste management issues are primarily being addressed right now through the regulatory review document, which is out in front of the public, and once the comments have come back in the ministry will consider them in putting together a position.

1600

Ms Churley: Is the minister confirming that he will allocate funds to put a hazardous waste program in place?

Hon Mr Sterling: I don't know what I can allocate or promise at this point, when we haven't decided what we're going to do. It's a problem I've got to deal with. It's my responsibility to deal with it, so presumably I'm

going to have to put some resources, one way or the other, to deal with this problem.

Ms Churley: You do know that under the Canada-Ontario agreement the province has a responsibility to decommission, for instance, 90% of high-level PCBs and accelerate the destruction of low-level PCBs by the year 2000. Those are areas that we'll be watching for action.

As my last question — I have other concerns and I'm sorry you can't hear them now, but the members of your government will — I'd like to ask you what I think is a profound question that overrides this bill and a lot of other bills that I say is one of deregulation. I would say that every environmental group in all of Ontario says it's serious deregulation and will have serious impacts on the environment. Three respected bodies or agencies recently — the final one was the auditor's report, the Environmental Commissioner before that, the IJC before that, as well as all environmental groups — have been telling you that this and your other bills are deregulation, that the public is being shut out, that the Environmental Bill of Rights and the registry are not being used properly and people are not told about what's going on. Every environmental group is expressing this concern, yet you object and say, "No, they're wrong."

Can you tell me why you think you're right and that every environmental group is wrong, including environmental lawyers and policymakers who have been in the field for years and years and have nothing to gain personally? I just don't understand how there can be such a discrepancy in views.

Hon Mr Sterling: As an engineer I'll put on my engineering hat for this answer. I am quite willing to deal on a one-by-one basis with any specific charge anyone in this province has about the fact that I am deregulating any particular environmental standard. I will not accept a generic condemnation that we are deregulating, because I don't believe we are. I have yet to have somebody come in and say, "Norm, you are deregulating this regulation and here's how you're doing it." If they show me that, I won't deregulate it.

Ms Churley: I can give you a list of very specific deregulation.

Hon Mr Sterling: I wish you would.

Ms Churley: I've pointed some out in the House, not just generic, but specific.

Hon Mr Sterling: I wish you'd give them and I'd love to answer you.

Ms Churley: If we can prove, which I can, that certain measures, which are clearly deregulation, are going to put more pollution into the environment, will you make a commitment that you will repeal the changes you have made?

Hon Mr Sterling: I will listen very closely to what you have to say. I will not always agree with what you say, because I will take my technical advice and respond —

Ms Churley: You're an engineer, you said.

Hon Mr Sterling: That's right, and I want to listen to people who have a sound technical argument as well.

Ms Churley: So you're not making a firm commitment to change, repeal, make amendments to if it can be proven that the environment will be or is being harmed.

Hon Mr Sterling: If it can be proven to me, I will not make an environmental regulation more lax than it is now. I will not relax any environmental regulation in this province.

Ms Churley: Will you repeal those you have that have already done that?

Hon Mr Sterling: I have to look at what's been done and what people are relying on in terms of the present-day situation. I can't turn back the clock on some situations, but let me know what you're talking about and I'll be pleased to deal with them on a one-by-one basis.

The Chair: Thank you, Minister, for taking the time to be here and take a few questions. With that we move into our consideration of presentations of various groups that have expressed an interest in speaking to this bill.

MOTOR VEHICLE MANUFACTURERS' ASSOCIATION

The Chair: Our first group up this afternoon is the Motor Vehicle Manufacturers' Association, if I could ask them to come forward to the table. If you'd be kind enough to introduce yourselves for the benefit of Hansard I'd be grateful.

Mr Mark Nantais: Good afternoon, members of the committee. The Motor Vehicle Manufacturers' Association and its member companies, which include the Big Three auto makers — Chrysler, Ford and General Motors — as well as Volvo Canada and Canada's heavy-duty truck makers, certainly appreciate this opportunity to present their views on Bill 57.

My name is Mark Nantais. I am president of the association. Today I'm fortunate to have accompanying me Mr Paul Hansen, manager of environmental affairs for Chrysler Canada Ltd; Mr Bruce Reid, director of the office of the environment for General Motors of Canada Ltd; and Mr Blake Smith, manager of environmental quality for the Ford Motor Co of Canada Ltd.

Our member companies, if you're not aware, collectively employ about 72,000 Canadians directly in vehicle assembly operations, with the vast majority of that employment right here in Ontario. Ontario is home to more than 93% of all automotive manufacturing activity in Canada. Automotive manufacturing is the engine of economic growth and stability in this province.

The industry as a whole employs more than 500,000 Canadians, which demonstrates the spinoff effects of our industry, and accounts for one in six jobs in Ontario. In 1995 the automotive industry represented 45% of Ontario's total merchandise exports, valued at more than \$55 billion.

Automotive manufacturers' investments over the last decade exceed \$15 billion, which essentially translate into about \$2 billion in capital expenditures per year, on average, over the last five years.

Overall, members of the MVMA support the Ontario government's intention to reform regulation, remove duplicity and simplify compliance requirements governing the operation of manufacturing and businesses in this province. We, like the Ontario government, firmly believe that efficiency improvements to the environmental approvals process can be achieved without any degradation in overall environmental protection and quality.

Our industry remains committed to working with this government to improve efficiencies while maximizing environmental performance. We have numerous examples establishing that flexibility and innovativeness in manufacturing processes and technology play critical roles in determining how manufacturing facilities respond to the ever-present need to remain efficient and competitive. In our case we respond to this need in ways which enable our facilities to meet production schedules in the "short-notice" demand for product in a volatile marketplace. Essentially we strive to maximize efficiencies at every level. Anything which is not used in the actual vehicle during manufacturing is thought to be waste. It is waste which for economic and environmental reasons is limited to the greatest extent possible.

It is our view that the amendments to the approvals process are indeed needed and cannot come too soon. However, the proposed amendments venture into regulatory powers which go beyond their purpose: to create efficiencies in the environmental approvals process itself.

While Bill 57 is intended to make the approvals process more efficient and minimize potential obstacles which may hinder manufacturing operations or delay the construction of new facilities, it may have quite the opposite effect as it is currently written.

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While certain amendments in Bill 57 combine existing regulatory powers found in the Environmental Protection Act, Bill 57 also expands the ministry's regulatory powers, increasing the likelihood of additional regulation unrelated to the approvals process. Other amendments enable the enactment of prescriptive regulations governing the establishment and discontinuance of facilities, including staffing, planning, design, operations or the maintenance of facilities. In simple terms, prescriptive regulations afford government the authority to dictate to manufacturers exactly how they should go about building and operating their facilities by citing the type of technology or the manufacturing process that must be employed, perhaps regardless of cost, availability or even the practicality.

On the other hand, performance-based regulation sets specific requirements or numeric targets and allows manufacturers the flexibility to determine what technologies, processes or other structures are needed to be compliant with the regulation. These are vastly different approaches.

We suggest that prescriptive regulation as opposed to performance-based regulation could represent an actual barrier to new projects in Ontario by causing delays and unnecessary added costs. Clearly this is a direction which the government should not pursue, nor do we believe that it is the intended direction. Manufacturing operations need the flexibility provided by performance-based regulations, which allows them to be compliant with requirements of the law and with the policies of the ministry.

Let me move from more general remarks to more specific remarks as they relate to various sections of Bill 57.

First, regarding subsection 175.1(b): This section combines, but also expands, the number of regulatory

powers previously found in the EPA, which appear to be completely unrelated to the approvals process.

Previously, regulations could be enacted regulating or prohibiting the operation of a class or type of motor vehicle to prevent discharge of contamination, and prohibiting, regulating or controlling the discharge of contaminants. Now the powers extend to "prohibiting, regulating or controlling...the making, use, sale, display, advertising, transfer, transportation, operation, maintenance, storage, recycling, disposal, or discharge...of any contaminant...motor vehicle...waste...substance...product...packaging...spill...or thing."

Motor vehicles advertising, use, sale etc should only be subject to regulation where the purpose is to prevent the actual discharge of contamination. While this may be implicit, as any regulatory powers extend only top powers under the EPA, it would be preferable to clearly state this in the provisions of the act.

Regarding subsection 175.1(c): This section proposes amendments with respect to prescribing fees for applicants of approvals and licences. In our opinion subsection 175.1(c), which deals with the fees provision, should be limited to reasonable fees that are based on actual administrative costs incurred and provide for refund of fees if required. Subsection 175.1(c) provides for enactment of regulations that charge fees where an activity has been carried on under an exempting regulation. This would appear to be an unjustified mechanism to generate revenue for the ministry, and it's our opinion it should be deleted. Any Ministry of Environment and Energy costs associated with this type of activity would appear to be nominal. We believe it is important to note that subsection 175.1(c) also enables the enactment of regulations for fees "in respect of any registration" by the EPA "or the regulations." This could include waste generator registrations and manifests. We are uncertain as to the need of this in the context of approvals reform.

With respect to subsection 176.1(h): This proposed section will enable the enactment of prescriptive regulations governing the establishment and discontinuance of facilities, which I've commented on generally. It is our opinion that the government should not enact regulations governing the planning, design, siting, establishment, facilities, staffing, operations or maintenance of facilities. Any such regulations could represent a barrier to new projects in Ontario by causing delays and unnecessary costs. Regulations should be performance-based and should not get into the actual nuts and bolts of how a business operates by prescribing planning and staffing requirements.

The meaning of "improvement" in this provision is unclear and also should be deleted. Finally, the Environmental Bill of Rights governs public notification and consultation. It is therefore unnecessary to create regulatory powers with respect to public participation in the EPA.

Subsections 176(h.2) and (1.1) enable regulations deeming approvals to exist for installations exempt from approval requirements by the regulations. It is unclear why a deemed approval is necessary for an exempted activity. A simpler way would be to have a conditional exemption.

Regarding section 177, specifically subsections (4) and (5): The provisions therein enable the reference to standards and codes, and this is actually a concern to the MVMA. It is proposed that the standards could be adopted and modified from time to time and we would suggest that incorporation of such standards by reference into regulation is a procedure which may have in fact real dangers associated with it. While it is tempting to see such incorporation as an alternative to the expense of developing new regulations, standards are sometimes created without a means of broad consultation. Unless the standard or code has been created by an open and transparent process, it runs the risk of being much more suited to the needs of a particular sector than the broad needs of industry as a whole. The necessity of this provision in relation to reforming the approval process is unclear.

Let me turn briefly, if I may, to the Ontario Water Resources Act.

The MVMA in fact has similar concerns relating to the proposed amendments to the OWRA. Subsections 75(1)(s) and (t) are replaced by a section similar to the proposed section, 176.1(h) to the EPA, enabling the enactment of prescriptive requirements governing the planning, design, siting, public notification and consultation, establishment, facilities, staffing and improvements and closure of water and sewage works.

Members of the MVMA wish to ensure that the efficiencies in the approval process are enhanced in an effective manner and, accordingly, offer their support for this initiative. However, we strongly recommend that the excessively far-reaching and prescriptive powers afforded to the ministry by virtue of these amendments be revisited and further adjusted in light of our comments which we respectfully submit.

We trust that our comments will be helpful to the committee as it deliberates over Bill 57. In its present state, however, Bill 57 affords the ministry, in our view, unnecessary and excessively far-reaching powers to regulate approvals which is the basis of our industry's concern.

Again, we thank you for this opportunity to appear before you today. Both myself and my colleagues would be pleased to answer any questions you may have at this time.

The Chair: Thank you, Mr Nantais. We appreciate your presentation and that affords us just over two minutes per caucus. I would remind members today that we have been told there'll be a vote at 6 o'clock, so we'll certainly want to keep on schedule if we can this afternoon.

Mr Hoy: And it's a very important vote indeed.

Ms Churley: To your riding, John.

Mr Hoy: — and I'd appreciate it if we do make that vote.

Thank you very much for your presentation this afternoon. It's a very comprehensive one in the areas in which you are speaking. On page 2, you say that, "Bill 57...expands the ministry's regulatory powers, increasing the likelihood of additional regulation unrelated to the approvals process." Are there areas where you would like these regulations that we'll say you are fearful of — that

you would like to see in the act, up front and rather through the regulatory process? Is there anything you might suggest that you want to see definitely put in the act?

Mr Nantais: I don't think we would have anything that we'd want to see up front and centre at this point in time. The remarks there were really designed or intended to reflect the prescriptiveness of the regulation.

Take, for instance, requirements that would prescribe staffing levels. We firmly believe that is a prescriptive requirement that should be left totally up to the company or the industry who in their position are best able to determine what staffing levels are appropriate for a particular facility, both from an operational standpoint and from a maintenance standpoint. Does anyone have anything you wish to add to that?

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Mr Hoy: On page 3, you are talking about reasonable fees based on actual administrative costs incurred and provide for a refund of fees. I would be in your position too if I was charged too much for any particular service. But don't you think the onus is on the ministry to correctly identify the amount of fees that are asked for rather than getting into a system of refunds, delay, burden of proof and all those matters?

Mr Blake Smith: The observation about refunds was in respect to things like novel technology where companies are kind of stepping out and doing something unusual at great expense to themselves or in cases where there's a voluntary improvement. The fee structure in the province of Ontario at present, its 2% basically equipment fee, is actually a barrier to doing the right thing. It's a disincentive. What nobody wants to see is the kind of financial disincentives to making life better.

Ms Churley: I appreciate your coming and representing the views of your organization in terms of this bill. I frankly don't quite understand some of your points. It's my fault. I just don't know enough about your relationship to the Ministry of Environment, frankly, to understand all of your concerns, and I don't have time to get into it now. I would like to know a bit more about it, but I guess in this short time, what I'd like to know, given your comments — if you can put it in a nutshell, you've mentioned a few areas where you see problems with this bill for you, and I appreciate that you're not commenting on the bill overall to every other sector. I believe you're coming to talk about how you perceive it'll impact on you. What is different from what you have to do now or don't have to do now that this bill changes? Is that possible to answer in a minute?

Mr Smith: It's not possible of course at present to crystal ball what regulations we're going to see at some point in the future. What this bill is doing is basically enabling regulation-writing powers. What happens in the future, we don't know, but certainly it's our view that the enabling here goes beyond what's necessary for reforming the approvals process. It has the potential to go well beyond what's necessary for protecting the environment.

The Chair: Very briefly.

Ms Churley: I can follow up at a later date. That's fine, thanks.

Mr Nantais: I'd be glad to answer any questions you might have in addition.

Mr Ted Chudleigh (Halton North): Thank you, Mr Nantais, for your presentation today in what I'm sure is a very busy time for you right now. I take it from your comments that you would support a performance-based approach in the application of environmental regulations. Given that in our society, and I think increasingly so, it's important for companies and industries to be seen to be green, to be encouraging and supportive of the environmental regulations, what types of incentives do you see that might be able to assist the ministry in the application of regulations and how we administer these programs that would encourage companies to not only meet regulatory regulations but to exceed them and to go beyond?

Mr Nantais: Maybe I'll just make a general comment and then turn it over to my colleagues who might be able to give you some more specifics, but I think one of the incentives of course is to ensure that industry has flexibility and creativity and the innovativeness available to them, and I think Blake touched on this, to use perhaps new technologies, new ways of manufacturing and clearly having a set of rules or regulations that don't constrain them in any way.

In the auto industry, which in many respects may be unknown to a lot of people, we tend to be on the cutting edge of new technologies, that we're constantly looking into research and development of new technologies that take us almost a leap forward, in some cases, in terms of manufacturing, in terms of environmental performance even.

One example, for instance, is an existing MOU, memorandum of understanding, that we have with Ontario and the federal government on pollution prevention. You will see in our fourth progress report, which is now available, a myriad of case studies which show some substantial reductions in various chemical substances and other contaminants of concern. Things like a memorandum of understanding or instruments like that, or tools we might call them, are a real incentive for industry.

I want to be absolutely clear that when we look towards an MOU, for instance, in terms of environmental protection and performance, that is an MOU which goes beyond regulation. In other words, the regulatory backdrop remains; that is the base line for compliance. What the MOU allows us to do is to use that flexibility and perhaps go beyond that regulation.

That's exactly what we've done, for instance, on our pollution prevention program here in Ontario, which is very successful. That would be one area to give an example, and I turn to my colleagues here perhaps to give you some additional specifics.

Mr Paul Hansen: Certainly, if you saw the Globe and Mail today, Chrysler's looking at getting a new paint shop in Windsor and certainly this is assisted by an MOU that we're working with the Ontario government on paint shops and emissions coming out of those areas. What we need in industry is certainty of regulation and certainty of what's coming when we plan these large programs. Indeed, we feel we have that.

The Chair: Thank you, gentlemen, for taking the time to make a presentation before us here today. We appreciate it very much.

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

The Chair: That leads us now to our next presentation from the Canadian Environmental Law Association. Good afternoon and welcome to the committee. Again, just a reminder, we have 20 minutes for you to divide as you see fit between either presentation time or questions and answers.

Mr Richard Lindgren: Good afternoon, members of the committee. I certainly appreciate the opportunity to come here today to speak to Bill 57. My name is Richard Lindgren. I'm a staff lawyer with the Canadian Environmental Law Association or CELA.

As some committee members know, CELA was established in 1970 for the purpose of using and improving laws to protect the environment. Since 1970 we've had lots of experience using the Environmental Protection Act and the Ontario Water Resources Act to protect the environment, and those are the very laws that Bill 57 attempts to amend.

For example, we've been in the courts to conduct prosecutions under these laws. We've been participants in a number of public hearings before the Environmental Appeal Board and the Environmental Assessment Board under these laws. We've launched civil litigation involving breaches of these laws. We've been involved in judicial review applications and statutory appeals; you name it, we've done it, probably, under these laws.

CELA has been doing it for 26 years; I've been doing it for over a decade and, in short, I think we've got a considerable background to draw upon when we review and analyse Bill 57. So that's what we've done. We've used our extensive background and experience and our public interest perspective to look at Bill 57 and our conclusion is this: While there are some discrete aspects of the bill that we can support, and I'll touch on those, the remainder of Bill 57 has too many provisions which are too open-ended, too vague, too ambiguous, too discretionary to be supportable.

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That's why CELA does not support Bill 57 as drafted, and we recommend that Bill 57 be substantially amended before it goes on to third reading, royal assent and proclamation.

I distributed to the clerk earlier today the written submission that we prepared on Bill 57 and I'm pleased to see that committee members have it. It's entitled *Submissions by the Canadian Environmental Law Association to the Ministry of Environment and Energy regarding the Environmental Approvals Improvement Act, 1996, Bill 57*. It's just a wonderful title, self-explanatory.

Essentially, this is the written, detailed critique of the bill that we produced in July 1996. We submitted it to the ministry at that time because it wasn't clear that the bill was going to go to this committee for public hearings so we thought we better get something in, get it in writing and throw it into the hopper. I commend this scintillating work to the committee. I'm not going to take my time now to go through it in any particular detail, but in short, not much has happened since July 1996. All of the concerns, all of the comments, all of the recommenda-

tions are still valid and I commend them to the committee.

What I'd like to do in my remaining time is just highlight some of the recommendations we've made in this submission. A summary of these recommendations can be found starting at page 1 of this submission. What I'll do is go through each of the recommendations briefly; there are six of them.

The first appears at the bottom of page 1 of the submission, and it is that public comment on Bill 57 must not be limited to the 30-day comment period prescribed under the Environmental Bill of Rights. Assuming that Bill 57 receives second reading, the bill should be referred to committee hearings and be amended during clause-by-clause review. The operative part of that recommendation is that the bill should be amended during clause-by-clause review, because it cannot be supported in its present form.

Obviously the bill is here, so this recommendation has been partially fulfilled, and I'm glad to see that. However, if you go on to read the commentary associated with recommendation 1, you'll see that we express some concern about the fact that a lot of the regulations are not available for discussion prior to passage of this bill. That's a matter of some concern.

The Liberal member referred to this as giving the minister a blank cheque. That's a diplomatic way of saying it. I would prefer perhaps a more earthy metaphor. It's like buying a pig in a poke, because quite frankly, I am not confident that we will see the right regulations exempting the rights and setting the right performance standards. I am emboldened, I'm heartened to hear the minister committing to public consultation on these exempting regulations. I certainly intend to participate and I hope the ministry lives up to that commitment.

Let me move on to recommendation 2. This has to do with the new fee regime under Bill 57. In principle, CELA does support enhancing the ability to recover fees by the Ministry of Environment. We think that's a good idea in principle. Quite frankly, we don't care if it's called "user-pay" or "polluter-pay." It's a good idea to expand the ministry's ability to recover funds from proponents who apply for or obtain licences and approvals and certificates from the ministry.

But what's missing from Bill 57 is an important environmental safeguard, and this is something Ms Churley referred to earlier in her opening statement. Bill 57 does not guarantee that any revenue generated under this new fee regime will actually be retained by the ministry to use for environmental protection purposes. That's quite a significant omission, in my respectful submission. As Ms Churley pointed out, there are provincial and federal precedents for establishing special or separate environmental funds, and that's what recommendation 2 is all about.

I heard with some interest the minister comment that this is a matter he will discuss with Mr. Eves. He wasn't sure if Mr. Eves would be favourable to setting up a separate environmental account using fees generated under this new fee regime. I can tell you that recommendation 2, which I'm about to read into the record, I stole shamelessly from the Game and Fish Act amendments.

These are the amendments the Honourable Chris Hodgson, Minister of Natural Resources, has put forward under the Game and Fish Act. This is not new; this is not novel; this government is doing it in other contexts.

Let me read recommendation 2. This is our recommendation about the new fee regime: Bill 57 should be amended to expressly require that any fees paid under the EPA or OWRA shall go into a specific fund or account administered solely by the MOEE and used exclusively for environmental protection purposes. In particular, Bill 57 should include the following provisions:

All money received by the crown under the EPA and OWRA shall be held in a separate account in the consolidated revenue fund, including all fines, penalties, fees and levies paid under the EPA, OWRA and regulations.

Money standing to the credit of the separate account is, for the purposes of the Financial Administration Act, money paid to Ontario for a special purpose.

The minister may direct that money be paid out of the account to the minister or to any person specified by the minister, for environmental protection purposes, such as: responding to spills or other environmental emergencies; restoring or rehabilitating the natural environment where it has been adversely affected by the discharge of a contaminant or pollutant; decommissioning contaminated lands that have been abandoned by the persons responsible for the contamination; funding programs that encourage or facilitate pollution prevention or waste reduction, reuse or recycling; or providing participant funding or intervenor funding to facilitate public participation in environmental decision-making under the EPA or OWRA.

The minister shall ensure that a report is prepared annually on the financial affairs of the separate account, including a summary of advice received from any advisory committee established by the minister relating to the operation of the separate account.

Finally, the minister shall submit the annual financial report to the Lieutenant Governor in Council and shall table the report in the Legislative Assembly by April 1 of each year.

It's not rocket science. It's been done under the Game and Fish Act and can be done in this context.

We have another concern associated with the fee regime, and this is reflected in recommendation 3. As it stands right now, Bill 57 will empower the Ministry of Environment and Energy to charge fees not only for copies of documents but for "the delivery of services," whatever that means. We're quite concerned by the lack of a definition of what services could be subject to a payment or a fee or a charge. Does it mean, for example, that if someone were to phone the Ministry of Environment and request an investigation, that is going to trigger a fee request? Probably not, but that's potentially there. What about somebody who wants to file an application for a review or an application for investigation under the Environmental Bill of Rights? It's free to do it now. Is it going to cost in the future? I don't know.

In my view, and in the view of the Canadian Environmental Law Association, there should not be a fee associated with basic environmental protection services that Ontario residents already pay for by way of taxes

and other revenue. That's why we make recommendation 3: Bill 57 should be amended to delete or, alternatively, to significantly limit the MOEE's ability to demand fees for public access to MOEE information, records or services.

Let me move on to recommendation 4. This has to do with the Ontario Waste Management Corp. As you know, Bill 57 dissolves the Ontario Waste Management Corp. That is a good thing, that is something we can support, but that doesn't end the matter. Simply legislating the OWMC out of existence does not make hazardous waste go out of existence. We still have lots and lots of hazardous waste in this province that requires treatment or disposal. Better yet, we have lots of waste that should otherwise be avoided or prevented from being created in the first place.

I read with interest the Provincial Auditor's report yesterday. He tells us that some two billion kilograms of hazardous waste is still being generated, transported, stored and disposed of in this province. That carries with it a whole risk of special environmental and health risks. That is why the Provincial Auditor recommended yesterday that the Ministry of Environment improve its monitoring and tracking of hazardous waste, and that is why we make recommendation 4: Bill 57 should be amended to expressly confer the power to pass regulations requiring the reduction, reuse or recycling of hazardous waste, or any class thereof.

Recommendation 5 deals with the Environmental Compensation Corp. CELA regards the creation of the ECC in 1985 as a very positive and progressive reform. We see Bill 57's proposed abolition of the ECC as a very retrogressive reform, and it's one we cannot support. In our view and in our experience, because we've dealt with the ECC, the ECC has played a very important role, not only in providing compensation to innocent victims of spills, but also in educating the public about their environmental rights, helping ensure that environmental restoration occurs and helping contain and clean up spills and so forth.

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The ECC will provide money to people who incur cost even though the spill has occurred through no fault of their own. People who incur cost in cleaning it up can go to the ECC and obtain funds. That's what the bulk of the compensation has been for over the past decade. It's to people who've incurred cost in cleaning up spills. That's something that should be encouraged. My fear is that getting rid of the ECC is not amenable to quick or prompt or effective spill cleanups. That's why we make recommendation 5: Bill 57 should be amended to retain the ECC, and consideration should be given to various options for restructuring or financing the ECC.

If the minister's concern is that too much public money has gone into the ECC — I don't accept that, but if that's a concern — then out of the new fees that are going to be generated under Bill 57 set aside or allocate some money to the ECC so they're using money paid into a fund by polluters, not the public at large.

I have to go on to make this recommendation: If the ECC is going to be terminated, then section 10 of Bill 57 must be amended to include a new subsection that

expressly provides that nothing in Bill 57 affects or limits the right of any person to obtain interim or final compensation for any claims accruing before June 3, 1996, and for which a notice of loss has been filed with the ECC prior to June 3, 1996.

There are people caught in the middle right now who have pending claims before the ECC. The ECC should not be wound down until those outstanding claims have been properly disposed of. I've got clients who have pending applications, and I understand that a lawyer in Ottawa, Mr Peter Annis, has submitted a written submission to the committee outlining his clients' concerns if the ECC is wound down without that kind of guarantee for pending applications.

Let me conclude by focusing on recommendation 6. This focuses on this much-hyped permit-by-rule regime that Bill 57 is going to implement in Ontario. In my view permit by rule, and this whole regime itself, is probably the most significant and most objectionable aspect of Bill 57 because it does give the minister virtually unfettered power to exempt any thing, any person, any contaminant, any site from the requirements of the existing legislation. People call it permit by rule, people call it standardized approval; I call it bad law. I'm not too proud to call it environmental deregulation.

The minister, earlier in his remarks, challenged anybody to show him that this is environmental deregulation or that any other initiative undertaken by the government is environmental deregulation. I can refer the minister to the very comprehensive document we filed yesterday on the regulatory review process. It's called Responding to the Rollbacks: Comments on Responsive Environmental Protection. This is in relation to the ministry's plan to gut, delete, amend, consolidate some 40 of the 80 environmental regulations administered by the Ministry of Environment and Energy. At the conclusion of my remarks, I'd be prepared and happy to give my personal copy of this to the minister so he can look at it for himself.

I should also comment that I have, since his appointment, attempted to schedule a meeting with the minister to discuss what I conceive of as environmental deregulation, ranging from Niagara Escarpment initiatives to the environmental assessment reforms to Bill 57, and I have not been successful. If anything comes out of this committee meeting, I hope it's a commitment by the minister to meet with us and other interested stakeholders. I'd be happy to take him through lots of examples where deregulation is happening, where current standards are being weakened or eliminated.

As it stands, we cannot support permit by rule. We don't know what's going to be exempted. We don't know what the performance standards are going to be. We don't know who is going to monitor, who is going to enforce. Quite frankly, there are a lot of problems with permit by rule. We're not prepared to sign off on that at this point. But I will sign off on my comments at this point.

The Chair: Thank you. That affords us only less than a minute per caucus if members have a very brief question or comment.

Ms Churley: Given the lack of time, this may be unorthodox, but I would like to facilitate a meeting between the minister, who happily is still here, and Mr Lindgren. Perhaps I can use this opportunity to ask — I know he's not on the floor; I ask your indulgence, Mr Chair and the committee — if the minister would commit to set up a meeting with Mr Lindgren while you're both here today. It might be easier to do it that way.

Hon Mr Sterling: I don't arrange my meetings, but I will make every attempt to meet with every group. I certainly will do that.

Ms Churley: But you can't commit to meet with Mr Lindgren?

Hon Mr Sterling: I don't know whether I can. I don't know if they're in the middle of doing this now or not. I have no idea. I don't know what I'm going to be doing two days from now. I will try to meet with every group that has a —

Ms Churley: Well, I can't get a commitment for you today.

Hon Mr Sterling: CELA is a significant player in this business. I will be meeting with them some time in the future.

Mr Carroll: Thank you, Mr Lindgren. Good to see you again. You also presented to us on Bill 52, and you were opposed to that one too.

The Motor Vehicle Manufacturers' Association presented to us just before you, and basically they're in favour of the thrust of this. They've got some problems with some of the semantics, but they're in favour of the thrust. Could you tell me, would you classify them as bad corporate citizens from an environmental standpoint?

Mr Lindgren: I can't say that I'm familiar enough with their operations to take a position one way or the other. I've never had occasion to sue any of their members, if that's what you're getting at.

Mr Hoy: I thank you very much for your presentation. There isn't really very much time to get into this. I had looked previously at your other document, and this is maybe condensed here in this book. I'd just simply say that your name is well known in the hamlet of Fletcher.

Ms Churley: His name is well known everywhere.

The Chair: Thank you, Mr Lindgren, for appearing before us here today.

ONTARIO WASTE MANAGEMENT ASSOCIATION

The Chair: That takes us now to the Ontario Waste Management Association. Good afternoon. Welcome to the committee. Again, a reminder that we have 20 minutes for you to divide as you see fit.

Mr Terry Taylor: My name is Terry Taylor. I'm the executive director of the Ontario Waste Management Association. Our association is privileged to have this opportunity to address the committee today.

The association wants to compliment the government for recognizing that there is simply too much process involved in providing approvals to business operations that pose no significant threat to the environment. If this proposed system of standardized approvals is developed properly, the government's objective of reducing red tape,

reducing costs and encouraging entrepreneurial investment activity will be readily accomplished.

We are here today to discuss just one aspect of this bill. As you know, there are many regulatory reform initiatives under way today at the Ministry of Environment and Energy. Parts of this bill are linked to those other initiatives. It is imperative, therefore, that these amendments be viewed in the larger context of the overall reform package and that care be given to think through the various possible ramifications of implementing all of these reforms together.

In its regulatory reform document Responsive Environmental Protection, the ministry proposes to pass along to the province's municipalities the responsibility to approve, issue and otherwise manage those types of simple and benign standardized environmental approvals contemplated in this bill. This bill is the legislation that provides the authority to the municipalities to charge fees in connection with these administrative activities.

It's no secret that all municipalities today face the constant challenge of funding their operations and programs with resources that are becoming increasingly scarce. We are concerned that unless they are otherwise discouraged or prohibited from doing so, some municipalities may look upon this as an opportunity to levy fees and charges for permits and licences in amounts that greatly exceed their actual administrative costs.

In reading the explanatory notes and the other documents that accompanied the introduction of this bill, the government repeatedly states that these fees, while as yet to be determined, will recover administrative costs only. I also heard the minister today in his remarks to you make the comment that these fees will recover administrative costs, will permit the ministry and also, by virtue of the bill, the municipalities to recover administrative costs.

If municipalities sought to collect more money from the administration of standardized approvals than what can be attributable only to administration activity, then some applicants will be discouraged from complying with the law. That would mean that unlicensed and unpermitted operations would proliferate. This would result in increased enforcement and prosecution expenses for the ministry. Surely the provincial government does not want its attempts to streamline the approvals process to result in the exploitation of the regulated community by municipalities. Unfortunately, this bill will be passed into law before the regulations are written. By then, it will be just an academic discussion as to what was the government's intent when it wrote this legislation.

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We are here today asking that you note our concern. May we suggest the following remedy, one which will clarify the government's intent: We ask that "fees," as they are referred to in section 2 of the bill, clause 175.1(c) of the act, be defined as being specifically limited to fees charged to recoup administrative costs incurred in connection with the administration of standardized approvals referred to in other parts of the bill.

Ministry staff may counsel you that such an explicit definition is unnecessary. My question to you then is this: If the government agrees that the sole purpose of these

fees is to allow regulators to recover only their administrative costs, then what possible harm can it do to explicitly state the government's intent in the bill? On the other hand, if you choose not to specifically define what is envisaged by these fees, should one conclude that the government would not be opposed to the possibility of the exploitation of licensees by municipalities? I certainly hope not. That is why it is crucial that you give specific direction to those who will be drafting the regulations that are authorized by this bill.

Thank you very much. That's my presentation. I'll be happy to answer whatever questions you might have.

The Chair: That gives us just over three minutes per caucus for questioning. The questioning will start this time with the government.

Mr Doug Galt (Northumberland): Thank you, Mr Taylor, for the interesting presentation. You do make reference to regulations, and it's always a struggle in any bill how much should be regulation and how much should be part of the bill, and when do they come in. This is an ongoing struggle and certainly not unique to this particular one, as I'm sure you're aware.

I'd be interested in your comments as it relates to fees and some of the things that have been said earlier in this room while you were here as it relates to putting fees into a special package to be used for environmental purposes. Is that something you would support or do you see problems with doing that kind of thing with fees?

Mr Taylor: I guess I could probably be a little bit more supportive of it if we weren't \$100 billion in debt, Mr Parliamentary Assistant. If we had more money to worry about, as to what to do with it, I guess that argument could be made, but until such time as this province is on the way back to fiscal responsibility, even more so than it is now, I think we need every dollar we can get to be used in the most prudent way possible.

Mr Galt: We're looking at developing these standardized approvals, and that seems to describe it for me better than permit by rule. We're looking at various activities that are predictable and controllable. Do you see where there may be a problem down the road environmentally, establishing the regulation in advance, setting it up, and then it's up to the particular proponent or participant to ensure that they do follow those regulations? Do you see how that's weaker than going the old, complicated route of certificates of approval?

Mr Taylor: I think some people fail to make the distinction between the stuff that can hurt you and the stuff that can't. Putting in a bathroom exhaust fan or putting in an exhaust fan in a restaurant isn't going to result in people being born with three heads or whatever. That's a pretty simple and benign operation. I suppose you go right back to the earliest days and say, "Why do you have to bother worrying about it anyway?" But be that as it may, the simple and benign, as I think somebody said earlier, that pose no threat to the environment, those are the types of things — like falling off logs. That doesn't need to be caught up in a whole bunch of process. Siting a toxic waste dump, transporting hazardous waste, those are the things where regulation should be present and it should be enforceable and it should be enforced. I don't think you want to waste your time

worrying about producing a blizzard of paper because some restaurant wants to put an exhaust fan in its bathroom.

Mr Hoy: Thank you very much for your presentation. Your concern with fees is one that I can say I share as well, particularly with the downloading to municipalities that is currently taking place. They're taking highways back from the province and all kinds of things — they're not taking them back, they're being given highways. But I can tell you that unless we have a more understanding minister here, and I hope that we do — there was a bill that dealt with agriculture. I tried to put parameters on what fees could be put in place, and the government rather liked the word "fees" without any parameters.

I think you have a valid argument here. I do recall — and probably didn't understand it at the time; I was very young — that an older uncle of mine told me that money does strange things to people. I can see where municipalities that are feeling a crunch could maybe do exactly what you're saying here. So we appreciate your comments.

Mr Taylor: Thank you, Mr Hoy. If I could just make a comment, the problem is, getting back to Dr Galt's comment about what should be regulation and what should be in the bill, that's the age-old problem of having to impute what the intent was long after the legislation has been passed. That's all we're asking. Everybody is on side saying, "Well, that's all these fees are for." If everybody agrees with that, then stick it in the bill and give it some definition. Then you're not going to have that problem later on.

Ms Churley: Would you also agree then, given that you'd like to see the definition of "fees" be more concrete in the bill, that should also be up front around the permit-by-rule section? I know you haven't made a lot of comments on that, but that's also a problem with this bill: the regulations to follow. You may be right, in fact you are right, there are some sectors that are environmentally at least fairly benign, but where do you draw the line? We don't know what the list is at this point. Would you agree it would be better to have up front in this bill, as with the fees, the same thing for what industries are going to be affected by, the permit by rule?

Mr Taylor: My only problem with that, Ms Churley, is that as technology proceeds, as our engineers get smarter and as new processes are developed, what might be construed today as being a semihazardous activity, if I could use that term, could be rendered a benign activity in the future. You could well make the argument, five or 10 years down the road, that this particular activity which in the old days required a lot of regulation, because of science and technology, today no longer poses the same threat. If you lock in the types of activities that you're going to exempt in the bill as opposed to doing it by regulation, you're making it difficult to keep the spirit of this bill current with the processes as technology proceeds and as there's a legitimate cause to be made for reducing the regulatory environment on what used to be hazardous activities which are now benign activities.

I would counsel you that you're giving future governments and future regulators more flexibility if you don't

lock in the activities in the bill but you let it be determined by regulation.

The Chair: Thank you very much for taking the time to make a presentation before us here today, Mr Taylor.

Mr Bart Maves (Niagara Falls): Mr Chair, on a point of privilege: I believe Mr Hoy had mentioned that the transfer of roads to municipalities didn't have any money connected to it. I just want to correct the record that indeed a great deal of money was connected with that transfer. In fact, many of the municipalities were supportive of that.

The Chair: That's not a point of privilege, but thank you for correcting the order paper.

GREAT LAKES UNITED

The Chair: Next up is Great Lakes United. Good afternoon and welcome to the committee. Again, just a reminder we have 20 minutes for you to divide between either presentation time or question and answer.

Mr John Jackson: Thank you for giving me the opportunity to be here today. I'm John Jackson, president of Great Lakes United, which is a coalition of citizens, environmental groups, labour groups and conservation groups from throughout Canada and the United States, as well as the first nations. I'm also here today as coordinator of the Citizens Network on Waste Management, which is a coalition of grass-roots, local citizens' groups all across the province who have been working on waste issues in their communities.

On the bill today, I just want to address three aspects of it, because of the limited time we have to speak: The first is on the increased discretion given to the ministry and to the director to give exemptions, the second is on opening up the possibility of enshrining industrial codes into regulations, and the third is the Ontario Waste Management Corp provisions.

The first, in terms of increased discretion to exempt from requirements under the Environmental Protection Act and also under the Ontario Water Resources Act, is something that for the local community groups is very frightening, quite frankly. We've worked and fought and struggled over 20, 25 years to develop a system of approvals for waste management facilities in particular, but a wide range of facilities that can have an impact on the environment; to get a system that now the public has developed a basic trust in and has said: "We have certain assurances that if a particular type of facility comes up that could come into our community, we know we'll have the opportunity for a hearing. We know we'll have the opportunity to seriously come forward and present our concerns and be heard on the matter."

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Unfortunately, this provision that allows regulations to be passed, that gives sweeping powers in terms of the ability to give exemptions, takes away this trust that we as citizens' groups have developed in the process. That is a major setback in terms of the local community groups having confidence that the Environmental Protection Act will indeed protect them.

As we already know — we've heard references today — the regulatory review already has started to

come forward with proposals for exemptions which would come out under these changes in the Environmental Protection Act. It includes things such as, if you wanted to take hazardous waste from another company and burn it in your facility, for example, a cement kiln on your property, there would be no need to go through any sort of public hearing to give the public who live around that cement kiln the opportunity to make input in terms of whether they were willing to have hazardous waste burned in their community. That's in the regulatory provisions that are already being brought forward for public consultation.

There's also a fear on the part of local communities that the exemption clause says it can exempt specific persons, specific projects. So it isn't even simply wide categories where we have the opportunity to go in and discuss those, but a specific project that comes forward — and I have no reasons for pulling out these examples; they're just examples that could arise — such as Metro Toronto shipping garbage up to Kirkland Lake or some other community in the far north.

An exemption could be passed under this provision in the Environmental Protection Act which would say that didn't have to go through a hearing process and change the process dramatically. For the grass-roots groups, this really takes away our assurance that the Environmental Protection Act has brought us that we will have the opportunity to really make a difference in protecting our communities.

The second concern I want to bring forward is the provision in the act that says industrial codes could be enshrined in regulations. This is subsection 177(4), the adoption of orders. The concern with this is what this becomes is industry developing the regulations instead of the Parliament developing the regulations, instead of the ministry developing the regulations, instead of all of us in the communities developing the regulations that we consider acceptable. I'll give you a prime example of what's being developed at the moment.

We all see, as we go around in our communities, the buildings that have ISO 9000 signs. Now the International Standards Organization is developing what they call their environmental standards, ISO 14000, and we'll soon start seeing these signs on buildings. The ISO 14000 standards being developed by industry are standards that say you have to have a certain type of planning for the environment and these are the components of that plan. It doesn't actually say what standard you have to meet, as long as you have some controls. It doesn't say to what degree the control has to be. But these are the kinds of performance standards that are coming forward out of industry.

An ISO 14000, when it comes out, is going to be an instrument that's very powerful in terms of industry's promotion of it, and we have a real fear that it's these kinds of industry standards that will come in under this section of the Environmental Protection Act. What it really means is the taking away from us, the public, and from all sectors of the community the opportunity to develop our own regulations and standards. It's the ministry stepping back from its responsibility to develop

the standards that protect the community and devolving that to industry.

The third topic I want to discuss under this is the Ontario Waste Management Corporation Act. As someone who has worked with that community in west Lincoln that for over 10 years fought to stop this 300,000-tonne hazardous waste incinerator and landfill going in, we're delighted to see this provision, obviously. It's the final assurance to that community that we don't have to worry about this coming back to us again.

The Liberal government put it under the Environmental Assessment Act, which meant that it had a more serious assessment, which I think led to its demise. The NDP government finally said: "This proposal is nuts. We're not going to proceed with it." We're pleased to see that this government is finally saying: "Forget it, we don't need this hazardous waste corporation. Let's step back from it."

But the people in that community who fought so hard all those years to say, "No, this is not a facility that's appropriate for our community or any other community in this province," are also dedicated, and throughout their struggle were dedicated, to making sure that we did do something appropriate with hazardous waste. So we ask you to put into these provisions of the Environmental Protection Act the power for the ministry, for the cabinet, to make regulations that require hazardous waste reduction and recycling, because that is the critical next step. Putting such a provision in the Environmental Protection Act then becomes a commitment from the government to proceed and do something about hazardous waste. Thank you for your time.

The Chair: Thank you very much. That leaves us just over three minutes per caucus for questioning, this time commencing with the official opposition.

Mr Hoy: This ISO 9000 came up in another committee for a different reason, but do you understand ISO 9000 to be a situation where companies get involved in this process so that their product is the same in Nebraska as it is in Mexico as it is here in Toronto? Is that your understanding of the basis of ISO 9000?

You're nodding yes. Therefore, it's in their very best interests that their product have a high quality, no matter where it's bought in the world, and that's why they go into this. However, if they are to self-regulate under ISO 14000, it may have no relationship at all to their product. The fact that you won this particular sign at the front of your place of business, would you agree, does not necessarily mean that you're adhering to the guidelines, we'll say, for ISO 14000?

Mr Jackson: Definitely not. In fact I remember someone who's one of the consultants working in developing the ISO 14000 explaining to me because you have to realize that getting the standard, the ISO 14000 qualification on the sign on your building, is simply like getting a driver's licence. It doesn't mean you're driving safely; it simply means you've developed a plan by which you could drive safely. It's no guarantee you are.

In terms of ISO 9000 and those things, we have no problem. We think standards in terms of what a product should be like make a lot of sense. But ISO 14000 is moving us into the public environmental field where

industry is setting the standards that we in the community have to put up with in terms of our environmental protection. It's a very different creature from the signs that we currently see in the facilities, and that's why we have this real concern.

Mr Hoy: Therefore, there's a role for government to play in these regulations to take away the fear you say your community has of a loss of protection and, you said, a fear of other projects. So the government has, in your view, a strong role to play in formulating regulations as it pertains to the discussion today, and industry may not be well equipped to self-regulate.

Mr Jackson: Definitely not. I totally agree with that statement.

The other problem in terms of the process for developing standards like ISO 14000 is that it's developed in a form which is industry-driven. Occasionally they will include some people from other sectors on the committees that are developing the standards, but that's a very minimal involvement and it certainly is an industry-developed standard. The ministry should be developing the standards and regulations.

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Ms Churley: Thank you for coming to present to us today. As a long-time community environmental activist, particularly around hazardous waste, I was glad to see that you made a recommendation that the 3Rs, reduction, reuse etc, be included in the bill. I did ask the minister earlier in my brief few minutes about the government's overall plan for not only the reduction but the elimination of hazardous wastes, and also trying to prevent it from being produced in the first place. There's a whole series of issues that need to be dealt with there, so I'm glad. I realize the minister said he wants some time to figure out what he is going to do and come up with some programs. In the meantime, I think it would be quite useful and I hope there will be an amendment accepted on that.

Mr Jackson: We would be glad to work with him in helping him develop those.

Ms Churley: Great. I may add that to my knowledge, all of the hazardous waste plans that were in place have been cancelled. We're looking at practically nothing within the Ministry of the Environment now to deal with hazardous waste, which is a very big problem. Thank you for your offer to help with that.

I want to ask you briefly, just what do you think about voluntary measures in general which this government and indeed the federal government, although they're backing off a bit, has been moving to more and more in terms of environmental protection?

Mr Jackson: What's really interesting is that I think voluntary measures on their own cannot do the job. They have to be backed up by regulations. What I find very interesting is if you sit on multistakeholder committees, and I've sat on quite a few, and things like, for example, the national packaging protocol, where we have the various industry sectors as well as government and the environmental groups sitting at the table, what happens is before we end the process, the industries always end up saying, "We want backdrop legislation to be sure that everyone in our sector, all of our competitors, are doing as good a job as we're happy to do." What's interesting

is it ends up being industry that is also saying, "We don't want this program to just be voluntary, or we're going to step away from it."

Ms Churley: So it's not a level playing field, in other words.

Mr Jackson: That's right.

The Chair: That takes us now to the government benches.

Mr Galt: Mr Jackson, thanks very much for coming out and for your presentation. Just a couple of things I'd like to bring to your attention: first, to make it clear that the minister does have the right to exempt. That's already in the legislation. Just to clarify on that particular one, and also just in the process of developing regulations, that isn't something that the minister can up and trot off and say, "Here's a new regulation." In connection with the Ministry of Environment, it will go out in the Environmental Bill of Rights. People like yourself will certainly be very aware that it's being looked and then of course it has to be approved by cabinet later, so they just don't come in willy-nilly, as might have come across from your presentation. You may not have said that exactly, but it's kind of the feeling.

This process, permit by rule, call it what you may, standardized approval, we already have two of those in place from the previous government, one for composting purposes and one for collection of used oil. If it's not convenient for that used oil, I think you know where it goes. You could talk the same about batteries, you could talk about antifreeze, you could talk about paint. Those are some of the things we have in mind. Do you have a problem with doing those kinds of things, collecting those kinds of materials?

Mr Jackson: There are three questions. Let me just address them. The first one in terms of the minister's discretion, there are certain discretionary powers there, but this definitely broadens it. Otherwise, why put the section in? The section wouldn't be necessary in terms of the discretionary powers if this wasn't in some way broadening the powers.

In terms of the regulatory process, yes, under the Environmental Bill of Rights it has to go out for public consultation, but a 30-day period is required. Thirty days for community groups to seriously respond to a regulation and try to organize around that and make a difference is not enough time to seriously deal with regulatory proposals.

One of the problems in terms of regulatory proposals is that the people who may end up being most affected in the long run, because it's their community that a proposal for a facility comes to, don't even realize when the regulation is out there that it could affect them, and therefore, they don't come forward to speak, which is understandable.

In terms of easier permitting processes for things like composting facilities and some of those facilities, we certainly have flexibility in terms of some types of facilities receiving easier approvals. We definitely are quite willing to agree with that type of thing. Our problem is, we need some assurances in terms of how far this will go. To us, this is opening the door wide open, that we don't know how far it might go. That's what really worries us.

The Chair: We have time for a brief question, Mr Carroll.

Mr Carroll: Mine wasn't going to be that brief and actually Mr Jackson just kind of touched on it a little bit there. You are saying that you do agree with simplifying the system to allow somebody who wants to make a change that in no way will provide a negative impact on the environment to be allowed to go ahead and make that change, provided they fall within the guidelines.

Mr Jackson: It depends what the kind of facility is and also we would have to clearly define the types of changes.

Mr Carroll: So you're not interested in the results as much as you're interested —

Mr Jackson: But the problem is that in terms of defining the type of facility, I would do that on the basis of the result, about what difference it would make.

Mr Carroll: So as long as the result is as good or better, then you favour us being able to say to the manufacturer or whatever, "If you make that change, as long as you fit within these parameters, that's okay?"

Mr Jackson: As long as it is a minor change on a facility that is not going to create a problem for the community. That's why we need a clear definition of the type of facility that we're talking about, and the type of change.

The Chair: Thank you, Mr Jackson, for taking the time to appear before us here today.

ALLIANCE OF MANUFACTURERS AND EXPORTERS CANADA, ONTARIO DIVISION

The Chair: That takes us to our next group, the Alliance of Manufacturers and Exporters Canada. I invite them to come forward, introduce themselves for Hansard and again just remind you we have 20 minutes for you to divide. Welcome to the committee. Please proceed as soon as you're ready.

Mr Brian Collinson: Thank you, Mr Chairman and honourable members of the committee. My name is Brian Collinson. I'm the director of commercial policy of the Alliance of Manufacturers and Exporters Canada. With me today is the chairman of our committee, Mr Blake Smith, of Ford Canada. Although the two of us appear today, the submission represents broadly the views of our membership and of the environmental professionals from many of our member companies.

The Alliance of Manufacturers and Exporters Canada thanks you for the opportunity to present the views of our association with respect to Bill 57. The alliance is the voice of the Canadian manufacturing and exporting sectors on policy issues. Created by the amalgamation of the former Canadian Manufacturers' Association and the former Canadian Exporters' Association, we have nearly 2,000 member companies in Ontario and 3,500 across Canada, representing all sizes and types of manufacturing and exporting businesses. Our members produce well over 80% of the manufactured output of Canada.

About 1.8 million people are employed directly in manufacturing and processing in Canada, and three million more have jobs directly or indirectly dependent

upon these sectors. Most of these people are Ontarians. Manufacturing accounts for 8.5% of GDP, making it the largest single sector, while exporting accounts for over 37% of Canada's economic activity. The truth is unavoidable: If Canada cannot manufacture and export in an economic and competitive manner, the Ontario and Canadian economies will wither and die.

Many believe that higher taxes or tighter regulation should be imposed on businesses to compensate for the benefits which business is receiving at the expense of Canadian society. We believe that this conception is fundamentally incorrect. Canadian business paid \$115 billion, we estimate, in government-mandated expenditures in 1992. Regulatory compliance costs alone ran to an estimated \$48 billion. Moreover, manufacturers have faced a severe cost squeeze with selling prices increasing by only 19% from 1989 through 1995. Hourly wages, payroll taxes and other expenses have increased by much more.

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Hence, in 1995, it took the average firm approximately seven hours and 37 minutes out of every eight-hour production shift to cover operating expenses, and another 7.5 minutes to pay taxes. Consequently, the cost of regulatory burden in Ontario will mean the difference between creation or destruction of investment and jobs. Regulatory compliance costs must be reduced from their extraordinarily high levels if the Ontario economy is to provide the people of Ontario with jobs and growth.

How can Ontario get the maximum bang per buck in the sense of maintaining high standards of environmental quality while keeping compliance costs as low as possible?

The alliance supports the overall concept and direction of the government's regulatory reform package, particularly with regard to approvals reform and Bill 57. Amendments are essential to keep pace with the rapid rate of economic and technological change, which has rendered the present body of legislation, regulation and policy obsolete.

The alliance is broadly supportive of Bill 57 and the government's obvious commitment to the regulatory reform of the approvals process. This is a matter of the highest priority to our membership. None the less, there are some technical issues of major importance with respect to the language used in several sections of Bill 57 which give us serious concern, due to what the alliance believes to be the extraordinarily broad regulation-making power given to the ministry.

We believe that it is essential that the legislative purpose of Bill 57 be kept firmly in mind in assessing the breadth of the regulation-making powers given in that bill and, in particular, in clauses 175.1(b), 176(1)(h) and (h.1), 176(1)(h.2) and 176(6)(l.1). Fundamentally, the purpose of Bill 57, as the title indicates, is to improve the efficiency of the environmental approvals process.

Such broad powers might expedite the removal of many of the regulatory obstacles found in the approvals process, but they could also be used to introduce highly prescriptive and interventionist measures of the sort which the government is seeking to remove. Undoubtedly, the ministry could achieve the desired regulatory

results through a much simpler and less far-reaching set of legislative measures.

The specific sections are considered in detail below.

Clause 175.1(b) consolidates a range of powers found in various sections of the EPA, but in so doing, it expands them. The section gives the power to make regulations "prohibiting, regulating or controlling" a very large range of activities, including sale, display, advertising, transfer, transportation, operation, maintenance, storage, recycling, disposal or discharge of a wide range of items, including any activity, area, location, matter, substance, product, material, beverage, packaging, container or thing. This is unnecessarily broad for the purpose at hand. It should at least be clearly stated that such a broad range of regulatory powers is only in furtherance of the powers given by the EPA.

The language of clause 176(1)(h) bears strong resemblance to the language in the section mentioned above. It gives extraordinarily broad powers to prescribe requirements governing the discharge of any contaminant for any plant, structure, equipment, apparatus, mechanism or thing with respect to planning, design, siting, public notification and consultation, establishment, insurance, facilities, staffing, operation, maintenance, monitoring, record-keeping, submission of reports to the director and improvement.

Clause 176(h.1) gives similar regulation-making power in respect to the discontinuance of any facility.

The alliance strongly believes that prescriptive regulation of this type and this breadth could be a major impediment to the development of new industrial projects, because of the uncertainty created by how such broad powers will be used. In addition, performance-based regulation would be a much more efficient means of protecting the environment.

With regard to clauses 176(1)(h.1) and 176(6)(l.1), these sections create the regulatory power to deem the existence of certificates of approval in circumstances where an exemption from a requirement to obtain a certificate of approval has been granted. The concept of a deemed C of A for facilities that have complied with prescribed standards is unnecessarily cumbersome. We believe that it would be more effective to have a system of deemed exemptions per se rather than deemed approvals, allowing firms to completely avoid the approvals process wherever it is safe and practical to do so.

The alliance strongly recommends that the language of Bill 57 be amended to reduce the broad regulation-making powers granted so that industry may give its whole-hearted endorsement to the legislation reforming the approvals process.

The alliance thanks the committee for the opportunity to present our views with respect to Bill 57 and the approvals process.

The Chair: Thank you very much. That affords us about three minutes per caucus. This time we'll commence with the NDP.

Ms Churley: Thank you for your presentation. I just wonder — I don't think you've touched on it — what you think of the section on fees.

Mr Collinson: I think that Mr Smith would like to comment on that particularly, but in general, certainly our

membership feels that the fee-making power is also very broad and unnecessarily broad.

Mr Blake Smith: I think from an overall policy point of view, it's the alliance's position that anything that represents an additional tax is not going to be favoured. To the extent that fees are cost recovery of legitimate services, particularly if there is competitive access or at least there's a competitive situation in those services, they don't have much objection.

Ms Churley: Do you feel from what you know about what's being prescribed here that these fees will honestly just cover costs, ministry costs, or do you think it's going to partly go towards paying down the debt?

Mr Smith: I wouldn't want to speculate.

Ms Churley: I'll speculate. It's very broadly defined and yes, we believe it will go to paying down the debt or helping to fund the tax cut or whatever.

I'm just wondering, if we are not able to convince the government to do it differently, if they keep the fee prescription the way it is, would you think it would be a good idea at least for that money to be reserved, if there's extra funding, so if you have to pay it on top of what you owe to recover costs, it would at least go into a fund which will help further environmental protection instead of just into general revenue?

Mr Collinson: I think in general, as Mr Smith has indicated, we're opposed to additional tax burden on the industries of the province of Ontario.

The reservation or the creation of some sort of trust fund to maintain these fees for environmental purposes we believe would be fundamentally beside the point, because we believe that there are many more effective means to preserve and to maintain environmental quality.

Ms Churley: But if I may, the government is taking billions of dollars out to pay down the deficit and to reduce taxes. It is also coming out of the ministries of Environment and Natural Resources. Nobody disputes that. It's coming out. All ministries have to do their bit. So in fact the protection of the environment fundamentally has to be impacted on this, as does every program. Given that, this would be a way, no matter where you stand politically, at least to recover some money to help in areas where people have been laid off, technical staff, enforcers, monitoring people, so it would just help, in my view, deal with those mass cuts that are happening.

Mr Collinson: The position of the alliance would be that the cuts which have occurred in the context of environmental funding, and more generally in the context of many other departments, do not impact environmental quality and environmental care. In fact, the measures that the government is introducing stand to maintain or enhance environmental quality or care.

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Ms Churley: Why do you say that? What's your evidence?

The Chair: Thank you, Ms Churley. We've gone over our time there. Dr Galt and then Mr Tascona.

Ms Churley: Will you follow up on that for me, please?

Mr Galt: What I want to try and clarify — I did with the last presenter and it's come up again here — has to do with exemptions. As presently in the bill, an exemp-

tion is yes or no with no conditions; it's either in or out, and the minister is not at the time of exemption able to apply conditions.

If you look at 175(1)(a), at the very end of it, and the regulations and prescribing conditions for the exemption from this act and the regulations, it's the conditions the minister now needs the ability or the power to attach to these exemptions or to allow the standardized approvals, that conditions can be applied. That has not been possible in the past and that is the driving force behind this.

Mr Smith: I recognize that. I think personally I've been involved in discussions about the need for approvals reform for a long, long time, but there's more than one way to skin a cat from the wording point of view.

Mr Galt: Animal welfarers wouldn't appreciate that.

Mr Smith: I've never been politically correct. There are other ways in terms of language that that could be done. For example, air approvals are covered in section 9 of the act. You could simply take those provisions to that section. There are a series of other mechanisms. It appears in doing this that what's been done is they've all been pushed into a single clause.

Mr Joseph N. Tascona (Simcoe Centre): On page 3 of your presentation, under number 2, you state that performance based regulation would be a much more efficient means of protecting the environment. Why do you say that?

Mr Smith: Because what happens in a performance based scenario is that the objective is set, the performance criteria, and the proponent or whoever is asking for approval is allowed flexibility in how to achieve that objective. It just allows creativity, basically.

Mr Tascona: Why is it more efficient, though?

Mr Smith: That just allows business creativity to be executed without the approvals process dictating how something has to be done. In the past, the technology in certain cases has actually been dictated.

Mr Tascona: What type of activities do you think should be deemed exemptions, and why?

Mr Smith: I think the examples that were used earlier, like a hot dog vendor, restaurants — one of my favourites is domestic washrooms — recreation areas —

Mr Tascona: What about your industry?

Mr Smith: The other case is where someone does something proactive — that is, they're trying to improve circumstances, voluntarily coming forward with projects that are going to reduce emissions either through improved control equipment, process changes, new plant and process. It's kind of difficult to understand why you're held back on that from a timing point of view. In this era, timing is almost everything.

Mr Hoy: I've been following the line of questioning along this afternoon as it pertains to your brief. I just want to say in my opening remarks we agree that this gives extraordinarily broad regulation-making powers to the minister and we have concerns with that.

The Ontario environmental committee — I notice, Mr Smith, that you're with Ford Motor Co, and then in another presentation at 4 o'clock you were with environmental affairs and environmental quality. Your expertise in the environment, is it one of making sure that you comply with regulations or have you been involved in

development thereof, and just what are the origins of the Ontario environmental committee?

Mr Smith: Of the alliance?

Mr Hoy: No, specifically the Ontario environmental committee.

Mr Collinson: The environmental committee is composed of individuals who are environmental professionals from a very broad range of our firms. There is a representation on that committee of all different sizes of manufacturers, from the largest down to the smallest. The committee is composed of people who are involved on a day-to-day basis with compliance with the existing regulatory regime. Because of their experience in compliance through the regulatory regime, we draw upon these people and their expertise for recommendations with respect to environmental policy and with the development of our environmental policy that hopefully will be effective in furthering both quality care of the environment and also the economic goals of the membership of the alliance.

The Chair: Thank you, gentlemen, for appearing before us here today. We appreciate it.

LAMBTON INDUSTRIAL SOCIETY

The Chair: That takes us to our last presentation of the afternoon, the Lambton Industrial Society. Good afternoon and welcome to the committee.

Mr Walter Frai: Ladies and gentlemen, my name is Walter Frai and I'm representing the Lambton Industrial Society. We've handed out some brochures to give you an idea of what the association does, but very quickly, first of all, thank you for allowing me to come here to represent the society.

The LIS is a non-profit, industry-based environmental co-operative. Currently we have 15 companies operating in Lambton county who are members of the society. The site managers from each of the companies sit on the LIS board of directors, and just as an aside, we have an annual budget of \$1 million a year to monitor the environmental effects on Lambton county. Our effort is to increase our understanding of the environment around us. The member companies are committed to managing their activities in a way that ensures a clean environment for this generation and those to follow.

Specifically, we would like to address this committee on the subject of approvals. The LIS strongly supports the MOEE's overall objective of streamlining and simplifying the approval process. The existing process provides no clear time lines or accountability, all factors that disrupt business planning. Business opportunities for Ontario companies can be and have been lost due to delays in obtaining approvals for minor changes required to produce small quantities of materials for specific customers. The process is also unpredictable in its outcome.

We believe substantial improvements can and should be made in these areas so that regulation is not considered as a barrier or impediment to industrial development in Ontario. At the same time, we fully support the MOEE's position that environmental standards not be lowered. We fully concur that human health and the environment must not be compromised in any way.

In his September 26, 1996, speech to the Legislature, Dr Doug Galt stated, and please correct me if I misquote you: "Currently under the Environmental Protection Act, any activity which could potentially result in emissions or discharge of any kind being released into the natural environment requires a certificate of approval. But the current legislation does not allow us to differentiate between the approvals required to operate a little restaurant exhaust fan and a giant smelter. This means that sometimes we need to go through costly and lengthy approvals processes for fairly common and mundane kinds of activities. It is the equivalent of trying to use a sledgehammer to kill a fly."

The LIS fully agrees with Dr Galt's statement and therefore proposes removal of the requirement of a certificate of approval for certain environmentally insignificant activities.

The LIS supports the MOEE on this activity; however, the current list of items being proposed is of little benefit to our industry. The inclusion of minor items in a C of A should not be in the C of A process in the first place. For example, the type of pump and size of line used to transfer water to a treatment plant are minor details best handled by the company design engineers. Currently, changes in these items require a modification of the C of A but may not have any impact on the performance of the treatment plant itself. Our proposal is that, in conjunction with industry, the MOEE develop boundaries and parameters for defining insignificance.

1740

While approvals are required for installation of any equipment or process which discharges anything into the natural environment, the current legislation actually goes further. With respect to the approvals, the Environmental Protection Act states, and I got this right out of the regulation:

"No person shall, except under and in accordance with a certificate of approval issued by the director,

"(a) construct, alter, extend or replace any plant, structure, equipment, apparatus, mechanism or thing that may discharge or from which may be discharged a contaminant into any part of the natural environment other than water; or

(b) alter a process or rate of production with the result that a contaminant may be discharged into any part of the natural environment other than water or the rate or manner of discharge of a contaminant into any part of the natural environment other than water may be altered."

This drives our process people completely bonkers trying to understand what this definition says.

The Ontario Water Resources Act goes further and says:

"No persons shall establish, alter, extend or replace new or existing sewage works except under and in accordance with an approval granted by a director."

Thus, certificates of approval are required for pollution prevention, pollution reduction, and all projects dealing with sewage systems, regardless of whether or not there's any environmental impact at all. Certificates of approval are also required for the substitution of a toxic chemical by a more environmentally friendly material.

The Lambton Industrial Society therefore proposes removal of requirements of approval for projects which reduce or do not change emissions. Specifically, this would include pollution prevention projects, pollution reduction projects, toxic chemical substitution and pilot studies associated with this change, and projects which do not increase environmental emissions.

Many of the members of the Lambton Industrial Society are also members of the Canadian Chemical Producers' Association, and as such are committed to the principle of responsible care. In doing so, they are committed to voluntary pollution prevention/reduction activities. We do not believe that fees should be collected on such projects.

The LIS therefore proposes that fees should not be collected on projects not requiring a C of A. These would include pollution prevention projects which have no environmental effect. Since the objective of both industry and the ministry is to improve our environment, collection of fees when no service has been rendered is certainly a disincentive. As an example, we have in Ontario the adopt-a-highway program. How would the individuals and service groups involved in this program react if fees were now being imposed on their participation?

The process to obtain a C of A involves discussions with the local office of the Ministry of Environment and Energy. These are useful in that they provide alternatives not previously considered and input from the ministry's perspective. It has been our experience that the local officers are not only well versed in environmental legislation, but also in local requirements and sensitivities. Given this, they are potentially in a better position to issue permits for projects which do not require the detailed engineering done by the approvals branch in Toronto.

Therefore, the LIS proposes that approvals for minor projects which require an approval be handled exclusively by the local MOEE office. We believe this would have the benefit of reducing costs both for the ministry and industry and would greatly reduce the time needed for approval.

In conclusion, we are very supportive of the ministry's reform proposals. It is our opinion that removal of red tape will produce an environment in which all Ontarians will prosper. A healthy economy will ensure that capital is available to achieve a healthy environment.

I want to thank you for the opportunity to make this presentation.

The Chair: Thank you very much. That affords us just over three minutes per caucus for questioning.

Mr Carroll: Thank you very much, sir. We appreciate your presentation this morning. It's nice to see somebody from southwestern Ontario coming up to Toronto to talk to us.

A couple of groups have come forward expressing concern about the regulations that might follow from this legislation being actually more prescriptive than what we have now, and I sense from their conversations with us a sense of real mistrust in what the ministry might come forward with. As I listened to what you've said here, I sense the same kind of concern from the group you represent, that maybe instead of improving things, the

regulations may in fact make things worse. Am I reading something into what you said that's not there?

Mr Frai: I didn't mean to imply that. I've read what you're proposing to do, and you're right: You've got all the power in the world to do anything you want. At first it was a concern by our group. Maybe we're a trusting group, but we believe, based on what we've heard from the ministry so far, that we're going to be heading in a direction that will help our industry actually. You do have the power, yes, but we believe you won't abuse it.

Mr Carroll: So you don't have a problem with what the regulations might say? You feel pretty comfortable?

Mr Frai: We obviously will look at the regulations at that time and give our critique at that time. Theoretically, we will have to wait until the regulations come out.

Mr Carroll: You represent a group of people from Chemical Valley who are watched probably more than most industries as far as environmental areas are concerned. Obviously my guess is that despite the fact that there are some controversies once in a while, basically you're very good corporate citizens environmentally and you support the direction we are going in with this legislation. Is that correct?

Mr Frai: We do, because it gives you the power to do many of the things we think you need to do to clean up the approvals process. We have a real tough time complying with the existing one.

Mr Hoy: Thank you very much for your presentation. I see that your board of directors is made up of members from some of the larger corporations in Ontario and indeed Canada.

On page 2, you talk about the "removal of requirements of approvals for projects which reduce or do not change emissions." It's actually 2(c) that I'm not understanding. Can you enlighten me a little bit more about "toxic chemical substitution and pilot studies" and why you think the removal of requirements for approvals would apply there?

Mr Frai: There are some cases where we have a chemical, let's say benzene, which everybody knows is a carcinogen, and we are in the process of removing the benzene and substituting another material which does exactly the same thing but which will result in maybe the same amount of emissions but of a different chemical which is less hazardous. We see that as a great benefit to the environment. There's a lot of development work involved in doing that, and a lot of experimentation in doing it. It's very hard to define a certificate of approval that gives you the flexibility to do all the things you need to do to make that sort of a change. Again, depending on the chemical that you're substituting with, there may be a requirement for some review of some sort.

Mr Hoy: But if it's a pilot study, isn't there a danger there of an unknown, or am I misinterpreting what you mean by a pilot study?

Mr Frai: I guess "pilot study" means research in the lab and maybe in a pilot plant type of facility, on a small scale versus a large scale.

Mr Hoy: All right. You've helped me out there. Thank you very much.

Ms Churley: Mr Frai, I'm sorry, I don't have any questions, but I thank you for your presentation. We have

to go in for a vote soon and I want to use my time to raise an issue with the committee. I appreciate your coming to speak to us.

The Chair: If that means you want to do it in the absence of Mr Frai —

Ms Churley: I just want to make sure that I have time to raise an issue before the bells ring.

The Chair: We certainly do have three minutes. That clock is fast. We checked and the clock in the chamber right now is reading about 11 or 12 minutes to.

Ms Churley: I guess we're through with the deputations.

The Chair: In that case, thank you, Mr Frai, for coming in this afternoon and being our long-distance visitor for the day. I appreciate your taking the time to make a presentation.

Ms Churley: Mr Chair, it's actually related to this presentation. Certainly no offence to Mr Frai; we're quite glad he was able to come and speak to us. It's not personal. This is to do with an agreement that the subcommittee made on how we organize the presenters to us. We have four hours, and it's my contention that usually in these hearings, especially when it's a few hours, the two opposition parties and the government party should go in order and each be able to bring in people to speak. This committee determined that it would be pro-con, pro-con, pro-con; I lost out on that.

1750

Four hours altogether isn't much, and I know that there have been some environmental people — I can get that for the next meeting — who have been turned down because there is no time. I'm sorry, but I see here today the Alliance of Manufacturers and Exporters Canada and — again, not dismissing your role to play in this; I'm talking about how the committee works — people who are involved with the Canadian Chemical Producers' Association. Some of the groups that have come in to support the minister's bill have, quite frankly, not really commented on the entire bill but have just come in to mouth their position to support it, and very specific to their area, their industry. There are groups out there and people out there that want to speak to the whole bill. Having said that, I would like to know what happened so that today, with only a few hours left, we had these two very obvious groups at the end of the agenda that are supporting the government bill.

The Chair: Thank you for raising the issue. In fact, every group that indicated an interest in speaking to the bill has been accommodated, period. There is no one who met the deadline who — all three parties were encouraged to go to the people they knew might have an interest and to solicit groups over and above the advertisement on the parliamentary channel, which has run continuously since the day of our subcommittee hearing.

In fairness, I have to answer this question because Todd has inherited the committee, as you are aware, just recently. The previous clerk gave me an absolute assurance that as of 5 o'clock on that day every one of the 19 groups that had expressed an interest had been scheduled. The only reason we have two — in deference to Mr Frai's presentation, we didn't know what the Lambton Industrial Society was. The only reason there has been

any deviation from pro-con — as we look through it here today, it's totally consistent — was that we did not know exactly who or what they spoke for.

Ms Churley: When you're setting an agenda, Mr Chair, that agrees that it be pro-con, pro-con, I think it's incumbent on us to find out, because therefore —

The Chair: With the greatest of respect, I don't think the groups that express an interest in coming to speak to this or any other committee have an obligation to divulge their membership. We've raised that issue before, and I don't think it's incumbent upon us, nor is it appropriate, to scrutinize their own background or their reason for coming forward. But the overlying principle is that every group that asked has been accommodated.

Ms Churley: I tend to agree with what you say, which is why I think in fairness, as this is a legislative committee, not a government committee, you don't try to work it the pro-con, pro-con way because of the difficulties you end up with, like you said today. You didn't know. It just seems therefore to be fair that you have each party be able to equally participate in who comes before us, because it is difficult, I agree.

The Chair: The issue you're raising as opposed to using pro-con — and it is true that on one bill this committee allowed a rotation where all three parties submitted lists. No party submitted the list. The clerk and the Chair were given the authority to schedule, and I think that by providing the pro-con balance there's nothing more we could do. Neither I nor Doug Arnott had any idea whether any of the 19 groups had been approached by you.

Ms Churley: I'm saying there is a problem with the system, therefore, if this is the way, which I had argued in the subcommittee meeting.

Mrs Barbara Fisher (Bruce): I'll keep it very brief. Two points I'd like to make on this: I don't think it's for us to determine what any presenter should present. I take offence at somebody else suggesting that because somebody chooses to sit here and use their time as an intervenor and express their opinions specific to an issue in the bill, not all of the bill — it's up to the intervenor. This is a public —

Ms Churley: Absolutely. There's no argument —

Mrs Fisher: May I finish, Mr Chair?

The Chair: Yes. Mrs Fisher has the floor.

Mrs Fisher: The first point that was made was taking exception to what parts of bills — I'm stating my position with regard to that.

The second part is the pros and cons. As a resources development committee that has sat through maybe three or four pieces of legislation to date in the year we've been here, I don't think we've paid much attention in a lot of cities that I travelled to, on the past bill especially, with regard to pro-con, pro-con. If we want to be technical about that, I might say 20 out of 32 one day were one way or another. We didn't take exception to that. I think the people who make application to be heard at the hearings, where we can, should be fully allowed to be here.

Ms Churley: That's not the way it works, my dear.

Mrs Fisher: I think you've expressed your opinion. In fact, they all have been accommodated. That is the way it works.

The Chair: If we can summarize this, every group that expressed an interest has been accommodated. We can't ask them to look at any more of the bill than they may be interested in speaking to themselves. I can give you an absolute assurance that there was absolutely no malice and that the only reason that the pro-con was used was so that if, by any chance, there was media interest — it has been the past submission by all three parties on the subcommittee that there was merit in allowing both sides of the argument to be exposed to that sort of scrutiny, particularly on the first day.

In looking at the list on our next meeting date, there is an individual by the name of Mary Field. I have no idea

whether she is pro or con, or whether she will speak to the whole bill. I don't think it is incumbent upon the clerk or the Chair to ask that question. We have the Conservation Council coming forward —

Ms Churley: — how we have representations then. That's my point. If we have four hours for committee to deliberate a government bill, you have to have a system so you make sure that those who have problems with the bill are well represented.

The Chair: Thank you for your submission, Ms Churley. We'll take it under advisement. This committee stands adjourned until 3:30 on Wednesday, October 23.

The committee adjourned at 1756.

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Substitutions present / Membres remplaçants présents:

Mr Ted Arnott (Wellington PC) for Mr Murdoch
Mr Doug Galt (Northumberland PC) for Mr Baird

Clerk / Greffier: Mr Todd Decker

Staff / Personnel: Mr Ted Glenn, research officer, Legislative Research Service

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Mercredi 23 octobre 1996

**Standing committee on
resources development**

**Comité permanent du
développement des ressources**

**Environmental Approvals
Improvement Act, 1996**

**Loi de 1996 sur l'amélioration
du processus d'autorisation
environnementale**



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENT

Wednesday 23 October 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Mercredi 23 octobre 1996

*The committee met at 1533 in committee room 1.*ENVIRONMENTAL APPROVALS
IMPROVEMENT ACT, 1996LOI DE 1996 SUR L'AMÉLIORATION
DU PROCESSUS D'AUTORISATION
ENVIRONNEMENTALE

Consideration of Bill 57, An Act to improve the Efficiency of the Environmental Approvals Process and Certain Other Matters / Projet de loi 57, Loi visant à améliorer l'efficacité du processus d'autorisation environnementale et concernant certaines autres questions.

The Chair (Mr Steve Gilchrist): I call the meeting to order on this the second day of hearings on Bill 57, An Act to improve the Efficiency of the Environmental Approvals Process and Certain Other Matters.

CONSULTING ENGINEERS OF ONTARIO

The Chair: Our first group up this afternoon is the Consulting Engineers of Ontario. I invite them to come forward to the table and introduce themselves to Hansard.

Just a reminder, we have 20 minutes for you to divide as you see fit between either presentation or question and answer period.

Mr Donald Ingram: I'm Donald Ingram, president of the Consulting Engineers of Ontario, and with me is Mrs Erin Mahoney, who is the chairman of our consulting engineers and Ministry of Environment and Energy liaison committee.

Mr Chairman, members of the committee, the Consulting Engineers of Ontario is pleased to be here today to have the opportunity to present our views on Bill 57 to the standing committee on resources development. CEO is an organization devoted to the business and professional aspects of the practice of consulting engineering in Ontario. More than 275 firms throughout Ontario are members.

Consulting engineer is a designation used by a professional engineer in private practice who has met the requirements of the Professional Engineers Act and who has been approved to use this designation by the council of the Association of Professional Engineers of Ontario. A combination of education, technical knowledge, experience, judgement, integrity and a high dedication to a strict code of professional ethics and a code of consulting engineering practice are the hallmarks of our industry.

The consulting engineer has assumed an integral and vital role in the advanced technological planning and design that has become essential to the successful operation of projects which have a significant interface with

the environment, for example, sewage, water and transportation infrastructure and industrial processes.

The ingenuity and application of scientific knowledge to meet human needs, from the investigative process to the completion of a capital project, places the consulting engineer in a unique position to serve the public and government bodies. CEO advocates contracting out by government departments and agencies with a view to providing greater opportunities in the free enterprise system, producing world-class firms that export services and provide spinoff benefits to Ontario's manufacturers and suppliers.

I'd like to ask Mrs Mahoney to continue from there, please.

Mrs Erin Mahoney: We want to focus today on the environment-economic link which we believe is reinforced through Bill 57. Many of the projects which consulting engineers are retained for have an approvals component. In that sense, CEO is undoubtedly the largest user of the approvals system and we welcome this much-awaited reform of an often costly and cumbersome process. We are sure that by implementing the amendments outlined in Bill 57, limited monetary resources will be freed from administrative application and will be available for investment in those areas which can most directly benefit the environment, the capital infrastructure of the water, sewage and transportation works in the province of Ontario.

CEO supports the direction of the changes outlined in the bill and the objective of continued environmental protection coupled with economic growth and job creation.

With respect to approvals reform, the government states that possible candidates for standardized approvals regulations include projects that are reviewed and certified by an independent, accredited professional. CEO is of the opinion that where an independent, accredited professional is retained by a proponent and where the professional utilizes quality assurance and quality control mechanisms for review of project design, this review, in conjunction with completion of a "review checklist" which should be prepared by a stakeholder group such as the Consulting Engineers of Ontario and Ministry of Environment liaison committee, this should fulfil the terms of this clause.

The types of projects that should qualify for standardized approvals, in addition to water distribution and sewage collection systems, should include water and sewage pumping stations, water reservoirs and water and waste water treatment plants where proven technology is employed. For example, the activated sludge treatment process has been in use for many decades. If a proponent

proposes to employ this technology and the project is designed and reviewed by an independent, accredited professional, the project should qualify for standardized approvals.

So as not to stifle research, development and innovation in design, construction and operations, CEO is of the opinion that proponents must have the recourse to propose a project for approval that is different from the "rules" prescribed under the standardized approvals approach. This approach will typically be sought by proponents of larger projects through which innovation may yield significant improvements in environmental and economic performance. Although CEO is convinced that the ministry will make every attempt to keep the prescriptive rules current, such rules may not be able to keep pace with the rate of innovation, especially where such rules must be prescribed through regulation.

As a second matter, where approvals authority is transferred from the province to municipalities, a proponent must have the right to appeal to the province for the approval of projects which are of provincial significance. For example, there are certain industrial activities and public infrastructure which have absolute location requirements related to factors including raw material supply, marketplace location and access to specific modes of transportation. It is not appropriate to assume that these proponents can shop their facilities around until a willing host is found. The only willing host may not meet the location imperatives. Ultimately, only Queen's Park has the authority to determine what undertakings are in the interests of the province of Ontario.

Further, the fee structure should be based on the estimated amount of MOEE or municipal staff time employed in reviewing and issuing an approval. Simple guidelines could be developed by a stakeholder group to estimate this administrative charge for various types of projects. Such an administrative charge, once established, must constitute an upset fee limit for the approval. By tying fees to the actual cost of approvals and review, proponents will be motivated to submit complete and readily comprehensible approval submissions.

In summary, we are here today to tell you that the Consulting Engineers of Ontario supports the spirit and intent of the approvals reform process. We believe the consulting engineering industry will be a key player in Ontario achieving this important goal.

Don Ingram, president of CEO, or I would be pleased to respond to any of the questions that you have today on our brief.

1540

The Chair: Thank you very much. That affords us just fractionally less than four minutes per caucus. Traditionally, we start each day's questioning with the official opposition, but there are no representatives from the official opposition here, so we'll commence with Ms Churley.

Ms Marilyn Churley (Riverdale): Do I get eight minutes?

The Chair: Just in case the official opposition shows up before the end of this session —

Ms Churley: No, four minutes is quite appropriate; just joking.

Coming back to your comments on fees, when looking at the bill, it is my opinion and, I suppose, others' opinion that this is pretty open-ended and that you could in fact end up paying fees above and beyond cost recovery; that you will be, essentially, through the back door contributing to paying off the deficit or contributing to the tax cut or whatever. It's a bit of a hidden tax. How would you feel about that? I think we all feel comfortable with paying for costs, but what's your opinion on that?

Mrs Mahoney: It's an important point. Our opinion is that this administrative fee should be developed in consultation with a stakeholder group which has the experience in knowing how much time and effort it typically takes to review approvals applications for various types of undertakings. We think in this way, simple guidelines could be developed that would tie the so-developed fee structure directly to the level of effort required and would not constitute a hidden tax or a cost recovery above and beyond the time or level of effort required to issue the approval.

Ms Churley: Other jurisdictions like Alberta, and in fact under Agriculture and Food here, I believe, have done something that most finance ministers from all parties generally don't like. But, recently, the federal government is looking at this as well, and that is designating funds: taking it out of the general stream and putting it into a special designated fund — in this case, because there will be extra money made, there's certainly no doubt about that, above and beyond cost recovery.

There are some who are proposing that, in that event, a special designated fund — and this has happened in Alberta — be set up so that any moneys that are made above and beyond cost recovery be put into this fund to help pay for environmental spills or cleanups or environmental programs. This is being suggested particularly in view of the fact that there have been many cutbacks to the ministry and it's getting harder and harder to finance some of these programs. What would your view be on that?

Mrs Mahoney: We are of the opinion that this administrative charge should be user-pay tied directly to the cost, only the cost, of obtaining the approvals. So most importantly our point is that an excess cost recovery should not be the focus of this administrative fee; it should be solely to recover the staff time for municipalities and the Ministry of Environment and Energy devoted to reviewing and issuing the approvals for the undertaking.

If it is the case that excess fees are gleaned from this source, then we are certainly open to all kinds of suggestions. I think one that directs it back to the environment may be appropriate. But it's our intent, through our comments here, to communicate a strong position for not collecting fees in excess of what is required to issue the approval.

Ms Churley: The last question on permit by rule — and I recognize your support of that. I don't. I have a number of problems with it, one of which — and, given your profession, maybe you can help with this — is concern about the cumulative effects.

I know that you know technically far more about some of the proponents or undertakings that you said you could

see in that category, but there are possibilities of paint shops, dry cleaners — we don't have the full list yet — that will be constructed over time. Believe me, in my riding I've seen at first hand a very serious problem with the cumulative effect. Maybe one in the area wouldn't be a problem, maybe not even two, but when you have a lot, it can be a real problem. How would you suggest that the government deal with that particular aspect of permit by rule?

Mrs Mahoney: I think that standard setting must, first and foremost, address the risk to human health and the environment. Once the point of impact on the environment is identified and those risks can be clearly managed, I think standards must be developed based on risk to human health and safety, and that establishes the minimum standard. Then this minimum standard, which is prescribed under the standardized approvals regulations, can be made more stringent based on a consideration of economic and technical feasibility.

Mr John Hastings (Etobicoke-Rexdale): Mrs Mahoney, could you provide this committee, through your organization, with any specific examples, names knocked out, of projects that illustrate so clearly your point on page 2 dealing with the "costly and cumbersome" approvals process as it exists today?

Mrs Mahoney: We cannot provide that to you today.

Mr Hastings: Or examples later?

Mrs Mahoney: We can, yes.

Mr Hastings: Can you think of any specific ones from your personal experience that illustrate that point much more graphically than your statement as to the cost and how the thing went on and on?

Mrs Mahoney: I know from my personal work experience that we represented an industry which tried to obtain approval for combustion of waste-derived fuel, for which approval was never granted, but the process, which ultimately led nowhere, took many years and resulted in an expenditure of several hundreds of thousands, if not millions, of dollars on behalf of the proponent.

Mr Hastings: What kinds of jobs would have been involved, in terms of job creation, had that project ever received approval?

Mrs Mahoney: There would have been jobs created not only on the waste management side, through preparing the fuel, which could have been used to replace Ohio coal in Ontario's economy, which has a defined fuel value, but jobs also would have been created directly by the industry employing additional people to manage this material. From this single undertaking, perhaps somewhere between five and 10 jobs would be lost as a minimum.

Mr Hastings: From all the projects your organization has been involved in, how many jobs do you estimate have been lost in the last number of years because of this cumbersome process?

Mrs Mahoney: I don't think I can comment on behalf of CEO, but we believe that through improved efficiencies to the process, proponents will have a higher degree of comfort with the knowledge of the outcome and the process to get to the outcome; therefore they will enter the system, develop the undertaking and get approval for the undertaking. I can't estimate at this point what that job loss might have been.

Mr Hastings: Finally, do you believe that some of the new technologies coming to fruition in waste water treatment and the like have lost this province considerable export potential over the last few years? That could be directly attributable. You've never been able to get any of the new technologies approved, therefore you end up with no capacity at home to show how well they work and that they could be exportable services internationally.

Mrs Mahoney: I think that is the case, to some extent, although there has been government support of new technology in the province, and the private sector certainly knows there is a significant market potential for new technology on the waste water treatment side. That being said, perhaps we might see more examples of it in the province if there were a clearer approvals process. That's as far I'd be prepared to go today.

1550

The Chair: Mr Carroll, did you have any questions?

Mr Jack Carroll (Chatham-Kent): Yes. Thank you very much for your presentation. Those who come before us opposed to Bill 57 and the standardized approvals process argue that business cannot be trusted, that given the opportunity, they will cut corners and not treat the environment preciously.

As you are professional people in this area, a couple of questions: (1) Is protecting the environment good business for business people, and do they realize that? (2) In your opinion, can we trust industry, with the help of professional engineers, to safeguard our environment with a standardized approval process?

Mr Ingram: Maybe I can answer that, Mr Carroll. First, clearly professional engineering is a self-regulated profession. We take considerable pride in the self-regulation of our profession and the way we manage it. I believe our history of doing that through Professional Engineers of Ontario indicates that it's a profession that can be trusted that certainly puts considerable emphasis on responsibilities related to public safety and welfare. Also very clearly taking care of the environment, looking after the environment, would fall into that category. I believe that as a profession we carry the responsibility very well, we're very serious about it and our past record demonstrates that we self-regulate our profession very consistently.

The Chair: Thank you both for taking the time to appear before us and make your presentation today. We appreciate it.

CANADIAN CHEMICAL PRODUCERS' ASSOCIATION

The Chair: Our next presentation will be from the Canadian Chemical Producers' Association. Good afternoon. Welcome to the committee. If you would be kind enough to introduce yourselves for the benefit of Hansard, please.

Mr Norm Huebel: My name is Norm Huebel. I'm the Ontario regional manager for the Canadian Chemical Producers' Association. My colleague is Jorma Salmikivi. He's the chairman of our certificate of approvals subcommittee.

I think the fact that we have a certificate of approvals subcommittee speaks volumes for the importance of this issue to our association. This subcommittee has been in active force for a number of years, dealing or wrestling with the certificate of approval process. Mr Salmikivi is well equipped to talk about that process.

To begin with, I would like to talk a little bit about our association. The Canadian Chemical Producers' Association is a national association of close to 70 member companies, with headquarters in Ottawa. As the lead association in the chemicals sector, we represent 44 companies with 96 manufacturing sites in the province. These companies account for 90% of all manufactured chemicals in Ontario. To put things in perspective, the chemicals and chemical products industry is the third-largest manufacturing sector in Ontario in terms of shipments, the third-largest in terms of value added and the sixth in terms of employment.

We, meaning the association and our member companies, support the maintenance of high environmental standards while reducing barriers to economic growth and job creation. We've consistently talked about the links between competitiveness and job creation and the role the regulatory system has in contributing to competitiveness. Our members view the regulatory system as being key to their future competitiveness. In today's world of liberalized trade and open markets, there are considerably fewer areas of public policy which governments can use to attract investment and provide advantage. We believe that the regulatory system offers one of the few opportunities for Canadian governments to provide companies with sustainable competitive advantage. In order to accomplish this, the regulatory regime needs to be transformed into a performance-based approach, with full acceptance of alternatives to regulations such as voluntary approaches implemented by responsible companies, and I underline "responsible."

When speaking about the regulatory system as it pertains to environmental protection, government must ensure that companies' environmental expenditures are directed into priority areas and not misdirected into areas where marginal environmental improvement will be accomplished. Flexibility, allowing companies to use their own creativity and innovation, regulatory certainty, stakeholder consultation, the elimination of red tape, and encouraging private sector involvement in finding solutions and replacing outdated approaches with new, cost-effective alternatives more in tune with global trends are all objectives that will ensure that environmental protection can be coupled with economic growth and job creation. We are pleased that the ministry has recognized the importance of these factors.

Mr Salmikivi will now talk to the specifics of Bill 57 and how it fits in.

Mr Jim Salmikivi: I won't dissect Bill 57 on a micro basis but I will offer comments on a macrogeneric basis.

I understand that the bill will accomplish four key things:

(1) Close the Environmental Compensation Corp. Since the operations of this corporation have amounted to over four times the amount of compensation funds that have been meted out, it seems to be an inefficient manner of

providing compensation. We support its windup. We certainly don't have any quarrel with this objective.

(2) Cut red tape in the approvals process without compromising the high standards of environmental protection. This supports our opening remarks. We will comment further on this.

(3) Give the ministry the ability to recover costs of administering some of its record-keeping programs. We can support this concept provided that the services required to establish and monitor a high standard of environmental protection and the systems and processes required to deliver the services are efficient.

(4) Officially close the Ontario Waste Management Corp. What can I say? That's \$145 million down the drain.

CCPA believes that some of the objectives underlying Bill 57 are sound, appropriate and long overdue. I would like to talk about some of these objectives now.

We support the elimination of discrepancies between the Environmental Protection Act and the Ontario Water Resources Act. For example, we must ensure that the definition of "spills" is consistent between the two acts to prevent overreporting of minor occurrences.

We also support the development of standardized approvals regulations, sometimes called "permit by rule" in other jurisdictions. For example, the Canadian Council of Ministers of the Environment has issued a standard for the construction of a floating roof storage tank. If the company constructs a tank to meet the standard, it should not require a certificate of approval and burden the ministry and the company with redundant work to reject a design that has already been approved in the development of the standard.

We also support the development of new approvals regulations to exempt projects that have insignificant impact or a reduction of impact on the environment. For example, one of our member companies wanted to invest \$15 million to install a nitrous oxide abatement facility on a voluntary basis. They waited five months to get a certificate of approval and paid a fee of \$100,000 to install a project that was beneficial to the environment. We believe that a number of projects should be exempted from the C of A process.

However, we also believe that the ministry must have knowledge of these projects, and for that reason we have proposed a system of notification to replace the C of A process for exempted projects. Some candidates for exemptions are things such as pollution prevention projects or projects that reduce emissions into the environment without increasing adverse impact, such as the installation of a condenser on a process tank vent, the diversion of a direct discharge to an approved treatment plant, or the installation of sewer systems that discharge to approved waste water treatment facilities.

We also support an improvement in turnaround times for certificates of approval. For example, many minor projects today can take four to six months. This is hardly conducive to business planning and operation.

We also support the elimination of unnecessary red tape that adds cost and does nothing to improve the environment. Again an example: Under MISA regulations, companies must report their monitoring results

using a ministry-developed software that is cumbersome. The minister proposes to change this requirement under the regulatory reform.

We also support the incorporation of non-regulatory mechanisms for the resolution of environmental problems. For example, other mechanisms such as codes of practice, accredited companies and memorandums of understanding for voluntary initiatives may be approaches that allow the ministry to target problems with a rifle rather than a shotgun. Our feeling is that with responsible companies, carrots work better than sticks, meaning that incentives produce higher performance than regulations. To bring things closer to home, which is more effective and produces a better job with your children: "Clean up your room or you'll get a spanking," or "Do a good job of cleaning up your room and mommy and daddy will take you to Wonderland or a movie" or wherever?

1600

We have been doing a lot of work with both the federal and provincial governments on voluntary or non-regulatory approaches in an attempt to ensure that companies are spending their environmental dollars on the correct priorities for their manufacturing sites, not ones that have been dictated by regulations that do not recognize the environmental priorities for a particular site. We recognize that voluntary approaches will not be appropriate in all circumstances, and not all companies or individuals are responsible. Therefore, governments must establish appropriate prerequisites before inviting companies to participate in voluntary programs. Recognition and rewards for voluntary actions will maximize performance. Bill 57 will allow the government to establish appropriate benefits for voluntary actions.

Many groups may be concerned with the potential powers being sought under this bill. As major stakeholders, we too could have concerns because we have the potential to be massively impacted, negatively as well as positively. Things like single-site C of As could effectively shut us down if a single-site C of A is revoked rather than just a C of A dealing with a small section of a process. This is where trust comes in.

We believe the government is interested in the protection of the environment in a cost-effective manner that will not discourage investment and job creation. Current high levels of environmental protection will not and should not be sacrificed.

We believe new regulations formed from revised acts will be developed on a consultative basis to the satisfaction of true stakeholders.

We further believe that management practices of the 1960s, including those of government, are not appropriate for the 1990s. Changed industry ethics, changed awareness of environmental priorities, changed government resources and globalization have all indicated that governments must interact differently with their stakeholders. They must have the flexibility to respond quickly and proactively and must not have their hands tied by obsolete acts that contain redundancies and outdated approaches.

For the foregoing reasons, we support the passing of Bill 57. It will give the government the power and the legislative authority to carry out many of the reforms

outlined in the consultation paper entitled *Responsive Environmental Protection*.

We thank you for taking the time to hear our views.

Ms Churley: Thank you very much for your presentation. There are a lot of issues we don't have time to follow up on here, so I'm going to concentrate on your comments on page 3 where you say, "This is where trust comes in," and in general that whole discussion around voluntary approaches and trust and that whole interesting phenomenon of getting more into voluntary actions.

You can trust some people and you can't trust others, and that's true of all walks of life including industry. I suggest to you that if what you say is true, and you have a good reputation for keeping up to present environmental standards, when you've got an uneven set of regulations out there when a lot of it is voluntary, at the end of the day it could really hurt you too, especially when a ministry has been downsized to the point where maybe you can say, "Clean up your room," but there's nobody there to see if you've cleaned up your room or not.

There'll be some bad ones out there who are going to take advantage of that and put the good companies in jeopardy. I'd like your response to that and how you would suggest that be dealt with so you're not unfairly penalized by the bad companies. You have to admit they're out there, still.

Mr Salmikivi: As mentioned in our brief, there are responsible companies and there are those that may not be considered to be responsible by various parties. The key issue here, for us anyway, is that the government, the ministry requires additional tools to maintain and to enhance environmental protection in this province.

Those companies that show they can be trusted, for example, CCPA member companies, meet the codes of responsible care. Under those codes, we also have developed some tools we can share with the ministry. In a relationship that we're trying to build with the ministry, the ministry itself will fully appreciate what CCPA companies are trying to do and achieve.

For companies that are not responsible, there are always regulations. We are not proposing voluntary actions as the sole means of achieving environmental protection. We believe there are voluntary actions and we believe there is a place for regulations. We also see that through voluntary actions we can build a model for regulations to create this level playing field, because I think that's one of the issues we're addressing.

Ms Churley: Yes, absolutely.

Mr Huebel: I'd like to just add that I think one of the keys here is what we're doing is talking about differentiation. I think we alluded to it in our paper when we talked about prerequisites. What we've said is there's good guys and there's bad guys, and the way you screen them is you set a number of prerequisites; in other words, people have to meet certain things. They have to have certain systems in place; they have to have demonstrated performance in place. If they can meet the prerequisites the government puts in place, the government then feels comfortable. They believe that based upon track records and what's there, they will do what they say they're going to do. Those people live by a different set of rules than the other people who don't meet the prerequisites.

What you're doing is talking about different rules for the different players.

Mr Doug Galt (Northumberland): Thank you for your presentation. As more of a comment than anything, I am thrilled to see you identify some of the cumbersome regulations that we're trying to deal with, particularly the example you're using here, one that I had not come across, the \$15 million to install an nitrous oxide abatement facility on a voluntary basis, taking five months to try to improve the environment and costing \$100,000 in fees. That's the kind of thing the environmental regulatory review was all about: to improve the environment and try to improve the regulations so that people like yourselves could work their way through and improve the environment. There are too many regulations in there that are extremely cumbersome, that are detrimental to the environment. It was great to see you identifying that one.

Another one is the cumbersome software program that's now in place to try to report through. It encourages people to try to do an end-run, and the end result is the environment's been hurt in the past.

The minister's been very emphatic that if the economics come in conflict with the environment, the environment will always win. Our effort is to improve the economy and to streamline those regulations so that the environment can be protected and you can get on with your business. Thanks very much for an excellent presentation.

Mrs Lyn McLeod (Fort William): I don't think anybody would disagree that there's a desire to see the environmental approvals process streamlined, because we're all aware of how long it has taken and how costly it's been. One of the questions is, does this particular bill do that effectively?

I want to bring to your attention that the Motor Vehicle Manufacturers' Association raised some concerns. They agreed that amendments that would streamline the approvals process could not come too quickly, but they were afraid that the way this particular bill was written, it could have exactly the opposite effect. One of the issues they raised as a concern — it comes back to the question Ms Churley raised about trust — was that this bill allows the ministry power to exempt. It also allows the ministry considerable latitude to prescribe.

The motor vehicle manufacturers people were very concerned that what this could do would allow ministries perhaps in the future to be highly prescriptive; in fact, they said to dictate to manufacturers how they should go about building and operating their facilities by setting the type of technology or the manufacturing process that must be employed, perhaps regardless of cost availability or even the practicality. Is that an issue which gives you any cause for concern, that the direction in which regulations may be imposed through this may compound the problem, rather than relieve it?

Mr Huebel: We don't believe that's the intention of this government. Any discussions we've had would indicate they're moving towards performance-based, as opposed to prescriptive regulations. At the end of the day, my answer to that would be is that if the government chooses to write more prescriptive regulations, to put more burden on the industry, the reward is that future

investments will not be made in the province; they will go elsewhere, and that will be their reward. I don't think that's what they want. For that reason, I think we've already said, sure, we could have concerns as other groups, but we believe at the end of the day they want to protect the environment but they also want job creation and growth in this province.

Mrs McLeod: I guess the concern is that, as we write laws, they have continuity, and that if we want to achieve a certain intent with the law, it should be absolutely clear that's what the law is doing. Would you feel more comfortable if you could see the regulations set out and if there was some greater requirement for government to be public and consultative about the development of the actual regulations?

Mr Huebel: I think we've already said in our brief, we've talked about that there would be consultation with true stakeholders and we believe that's what they will do.

Mr Salmikivi: I'd like to make another comment. I believe all governments now and in the future will want to look at the most cost-effective way of delivering environmental protection in this province. What we have here with Bill 57 is the opportunity to develop more tools for the government to do exactly that. We believe there is a right balance between regulations and voluntary action. The challenge is to find that balance, and that will create the most cost-effective way of delivering the programs.

The Chair: We're already over our time. Thank you both for taking the time to appear before us and make a presentation today. We appreciate it.

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CONSERVATION COUNCIL OF ONTARIO

The Chair: That leads us to our next presentation, which will be from the Conservation Council of Ontario. Good afternoon and welcome to the committee.

Mr Andrew McCammon: Good afternoon and thank you very much. My name is Andrew McCammon. I am the secretary of the Conservation Council of Ontario. We provided copies of our summary of our presentation to the clerk. I hope they are making the rounds to you.

The Conservation Council of Ontario is a separately incorporated coalition of 33 environmental organizations in Ontario: environmental, professional and sectoral. We include under our umbrella groups such as the Wildlands League, the Federation of Ontario Naturalists, the Ontario Federation of Labour, and professional organizations such as the Ontario Federation of Agriculture and the Ontario Professional Planners Institute, so we really have a broad spectrum of people who come together.

The reason they come together — our mission, if you will — is that we're concerned about environmental sustainability for Ontario. We try to help develop environmental sustainability for Ontario with two main program areas: policy development for the articulation of sound provincial policy, and more of an active program of providing for the development of educational and training material for community action.

Bill 57 and related matters were the subject of extensive discussion at the September meeting of the Conser-

vation Council of Ontario. I can tell you that without exception the members present expressed serious concerns over both the intent and the content of the bill, as well as the overall context of many environmental initiatives currently being put forward by the government.

I will speak briefly to the points in the next couple of pages, but I can't underscore enough exactly the same point that Lyn McLeod spoke of a few minutes ago, that the bill can be read in a way such that environmentalists can rub their hands in glee at the prospect of stopping development, of protecting every tree in this province from being trimmed, or the complete opposite.

This bill has so much latitude and so much executive power and is so vague that it is of grievous concern to us. If you contemplate having these powers in place and having a government with a particular bent elected, you can imagine how this bill would be completely misused.

The comments I want to speak very briefly to before entertaining some of your questions are that primarily the bill enconces a tremendous amount of executive power in the minister. This is at a time when an awful lot of the mechanisms for public consultation have been terminated.

To give you an example of our concerns over the arbitrary manner in which the government might use this executive power, you merely have to look at what happened last week with respect to the ongoing debate over aggregate extraction in the Niagara Escarpment, where the Niagara Escarpment twice took to court the position that a company seeking to expand its operation on the other side of the road needed a new permit. After winning that in court twice, the government of this province decided that wasn't the case.

Secondly, we note that in fact there is nothing in the bill that relates to improved efficiency. If by "efficiency" the government means that there would be improved mechanisms to resolve the tension between the conflicting mandates of the government to protect the environment and to ensure some sort of orderly development, we are all in favour of that. We are all in favour of eliminating unnecessary red tape. We're in favour of eliminating the deficit and getting this province back into the black. We're all in favour of those in principle, but there's nothing in this bill that relates to efficiency. All it does is put power in the hands of the minister without due process.

Thirdly, the bill is unacceptably vague. We talked about that earlier by reiterating Ms McLeod's comments, and I think you could boil the bill down to 11 words: "The minister may do anything he or she wants to do." If you eliminate the "or she," you've got a nine-word bill.

Recent experience of our community with respect to vagueness in government documents or proposals includes a number of experiences with respect to responsive environmental protection. The document proposes changes to some 80 Ontario environmental regulations. Not only was the technical annexe late in arriving to support what the actual content of the bill might be, but in some instances the technical annexe disagreed completely with what the bill's intention was announced to be. There was scrambling. So the vagueness causes us some concern.

Fourthly, a number of our members, particularly those from smaller municipalities and northern communities,

are very concerned about the potential downloading of various programs or regulatory regimes to local municipalities that will create unlevel playing fields. At a time when the Premier of this province is concerned about other provinces doing corporate raids and tax deals to locate businesses to other provinces, and that we have a concern about developing an integrated marketing agency for the GTA and to show ourselves in a good light, this bill in fact creates the spectre of "The City Above" being in competition and luring businesses away from "The City with the Big Pit."

Fifthly, and as a much larger example of that, I want to refer you briefly to what's going on in ISO 14000. I have been on the Canadian advisory committee for ISO 14000 for three years, mostly as the only representative of environmental groups sitting on that committee. ISO 14000 is an excellent tool for corporations to implement voluntary EMSs, environmental management systems. That's what it was designed for. It was not designed to be a normative reference, and that's why environmental organizations around the world were not particularly involved in it.

Suddenly, while there's an effort to create voluntary level playing fields around the world, Ontario is downgrading its own regulatory regime. So Ontario companies that will be going international and saying, "Oh, we're ISO 14000 certified," they're going to laugh at you in Europe. "Yes, you may meet your local regulations, but we don't really know where Nipissing is and we don't think Nipissing's environmental regs for disposal of waste material are in any way similar to those of Ottawa or those in Quebec or those in Holland." So we think it's going the wrong way at the wrong time.

I also want to mention that the province is beginning to talk about codes of conduct more and more. While I work as a consultant in pollution prevention and think that there should be mechanisms to improve corporate initiatives and not tie them up in red tape, the pretence that codes of conduct are anything that were developed, particularly with respect to ISO, with environmental participation, with social participation and with even any government participation is dead wrong. I don't believe this government knows what it's doing when it talks about codes of conduct.

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Sixthly, Bill 57 is not an isolated example of what's going on in Ontario. We have drastic changes to staffing levels in MOEE and MNR. We're still trying to deal with the fallout from Bill 26 and there are supposed to be additional changes to the authority of the conservation authorities. I've mentioned responsive environmental protection before and my favourite is the ongoing pretence that the Ministry of Environment and Energy can seriously address any aspect of the last name in its title: anything to do with energy. So there's a lot to be done before we tinker with efficiency in a bill that doesn't address efficiency.

I want to close on a positive note. Our experience in the conservation council has been with a number of different sectors and so I want to speak briefly to those, and time constraints precluded me from typing more than just this list.

MOUs on pollution prevention should have targets. Currently this province is a signatory to the MOU on pollution prevention in the dry-cleaning sector. The dry-cleaning sector is to be commended for an awful lot of what it's trying to do and develop green cleaning. However, there are no targets. It's "Trust me, trust me."

If you take that and compare with the next element, the level playing field for targeted toxic chemicals, it's absolutely fascinating to me that one of the things currently being considered in this province is ending the requirement of pulp and paper companies with respect to AOX. And so at a time where you're trying to develop pollution prevention with the small dry cleaners who are trying to earn a living in a very competitive service-intensive industry, you're relieving the burden of dealing with toxic chemicals on another sector. Interestingly enough, that's completely against the experience of the Motor Vehicle Manufacturers' Association, which is voluntarily trying to eliminate 65 chemicals. So we're all over the map in Ontario.

Finally, jobs for sustainability: I just finished reading 24 CVs for one position in pollution prevention training, 14 of which were absolutely excellent and we couldn't get the interviewee list down below seven. It is encouraging to see young people taking courses and becoming prepared to become environmental professionals. It's terribly discouraging to see that there are very few outlets for them.

If you want to protect the environment, I don't think you do it by putting all the power in the hands of the minister, but you do creative things where employment is provided for in professional capacity.

One thing that could be done, and there are hundreds of them, would be to pass a bill or consider a voluntary regime where every corporation over a certain size would have an annual environmental audit. Think of how many certified accountants there are out there who work every year making sure that companies' annual statements are audited under generally accepted accounting procedures. Doing that would signal the intention of this government to protect the environment and to encourage a private sector to develop with consultants for environmental auditing.

I appeal to members of this committee to unite. Too often votes are government members against non-government members. I note that the name of this committee is the standing committee on resources development. I urge you to also be the standing committee on resources protection and to either substantially alter this bill through extensive consultation or ensure its withdrawal.

The Chair: That leaves us just fractionally over two minutes per caucus. We'll commence with the government.

Mr Carroll: Just a little clarification: You said that your organization and you were in favour of eliminating red tape, and you say in here on page 2, section 2, "there's nothing in the bill that in fact relates to improved efficiency."

One part of the bill eliminates the Ontario Waste Management Corp, which has spent \$145 million of the taxpayers' money to accomplish what appears, in my estimation, to be absolutely nothing, and another part

does away with the Environmental Compensation Corp, which spent \$3 million to pay out less than \$700,000 in claims.

If the elimination of those two do not in fact improve efficiency, then you and I come from a different place. Can you explain to me how you feel about the elimination of those two agencies and how come that has not improved efficiency?

Mr McCammon: Efficiency is based on the results. As I indicated during my presentation, Mr Carroll, we're in favour of identifying areas that are either duplications or in fact efficiencies can be obtained, but fundamentally I defined efficiency as the smooth functioning of resolving the tension between the conflicting mandates of protecting the environment and encouraging development on a model of sustainability.

Mr Carroll: What is wasting the taxpayers' money called?

Mr McCammon: I think I'd have to ask Brian Mulroney. Wasting the taxpayers' money is an economic reality that we do indeed have to deal with, but I don't believe that taking apart, completely dismantling a regulatory regime to ensure the long-term health of our resources and of our own children and grandchildren through biomagnification of toxic chemicals in our water and in our air is terribly sound. You may save \$300 million this year, but if everybody's dying of cancer in their 50s and 60s 40 years from now, we haven't saved a penny.

Mrs McLeod: I agree with you that this bill is so vague that it would be impossible even to tell the government's intent from what's in the bill. So you make guesses as to what the government's intent is because, as you say, it's not being presented in an isolated context.

I guess what I'd like to ask you is bit of a complex question. Recognizing that there are concerns about the time it takes to get environmental approvals, that there is duplication of process at many points, do you think it is possible that in some areas a standardized approval process could be effective if the bill was much more specific in terms of where it was appropriate and where it was not appropriate? If you do think there are some areas where it could be effective, do you think that the Ministry of Environment would have the capacity to enforce even what it put in place?

Mr McCammon: I very much endorse that. I'll give you two examples, very briefly. One is that there's a proposal from the Canadian Environmental Assessment Agency to develop a standard across Canada for environmental assessments. Currently, multinationals or transnationals in Canada might have to prepare very different types of environmental assessments, depending on the jurisdiction in which they want to do a certain operation. So if it's going to happen at that level, that's the type of standardization which is coming through the Canadian Standards Association in the ISO process. That type of initiative from the public to the private sector and without government, I think, has a tremendous amount of merit.

The proposals will be standardized, the criteria will be benchmarked and there'll be a quick thumbs-up, thumbs-down on whether or not the application would proceed, and then there'd be standardized mechanisms for actually evaluating it if it was to proceed.

On another element I mentioned earlier, environmental auditors, one of the other approaches within ISO 14000 is something called initial environmental review, which companies do in order to present proposals to any jurisdiction or indeed to bond markets for the release of issues of shares.

So there are all kinds of tremendous mechanisms within the new sphere of the way we have to do things which I endorse, but I don't think they're in any way talked about, encouraged or covered by any activity that this government's doing, nor certainly in this bill.

Mr Galt: I wonder if we could have that door closed. There's a fair amount of noise coming in from the hallway.

Ms Churley: I just want to respond to you and in response to Mr Carroll's question, because it's a very important one, around the getting rid of the OWMC, in particular, and the ECC. It was a good question, and I'll tell you what's wrong here: You're getting rid of the OWMC, which I don't think anybody disagrees with, given the final decision when we were in government, but the problem is our government had started to use that organization, and it doesn't have to be that, but as a way to promote a hazardous waste reduction strategy.

This government is getting rid of the OWMC but has also gotten rid of all of the hazardous waste programs that we put in place and were there before and has no plans for hazardous waste. That's why this is not efficient. You're dumping out the baby with the bathwater. So that's that issue.

On the ECC, again, it was doing its job. It's one of the few organizations I think we've ever seen in government that actually was coming in under budget. It was very, very carefully not paying out unnecessary moneys. It needs to be restructured, but it was doing a great job.

Part of the problem there is that most of the payments were going to municipalities, which were stuck with having to do cleanups because they couldn't get the money from the proponents, for a variety of reasons. They're not going to risk spending that money to clean up certain areas now because they know this fund isn't there. Down the road that's inefficient because there's not going to be anybody out there, including municipalities, to clean up the spills.

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So again I say okay, change it, restructure it, but I think it's misleading the way it's being positioned. That's what I believe you're trying to say here, that if you're going to cut red tape — and this is my view — if you're going to cut red tape, which I don't disagree with, just cutting red tape, like cutting out these two organizations and not looking at restructuring them to deal with the problems that are still there — that's the answer to your question, and that's a real problem that you now have.

The Chair: That's also the end of our time.

Ms Churley: Would you agree with that? Yes or no?

The Chair: Thank you, Ms Churley, and thank you very much for taking the time to appear before us with your presentation.

Mr McCammon: What she said.

The Chair: We appreciate it.

Mr McCammon: Thank you.

The Chair: That leads us now to the next presentation from the Urban Development Institute. I believe they're out in the hall, if someone could — oh, there's Mr Kaiser.

URBAN DEVELOPMENT INSTITUTE/ONTARIO

The Chair: Welcome. Welcome back, actually. Again, we have 20 minutes for you to divide as you see fit between presentation and question-and-answer time.

Mr Stephen Kaiser: Thank you very much, Mr Chair. We apologize for the noise outside. The home builders were just conducting a tour of the building and visiting the Lieutenant Governor's residence, so they were slightly boisterous when they left.

As you know, my name is Stephen Kaiser and I'm president of the Urban Development Institute. With me is Mr Reg Webster, president of the firm G.M. Sernas and Associates, a firm of consulting engineers and planners that is active throughout Ontario and one of our member companies.

I would like to thank you for allowing me the opportunity of providing our thoughts on Bill 57, the Environmental Approvals Improvement Act, from the perspective of the land development and home building industry. Our interest is focused on part II of the bill, which amends the Ontario Water Resources Act and makes provision for standardized approvals regulations.

Let me say at the outset that we support the government's direction, and believe these amendments will result in environmental regulation which is more relevant and responsive to today's economic circumstances. Before I expand on this point, however, I would like to describe briefly the role of the Urban Development Institute and the nature of its representation for the benefit of the committee.

For 40 years, the Urban Development Institute, or UDI, has acted as the voice of the land development, building and property management industry in the province of Ontario. The institute is a non-profit organization supported by its members, which include firms and individuals who own sizeable holdings of raw land, apartment units and commercial and industrial space. Our membership is engaged in all aspects of the planning and development of communities and the construction of residential, industrial and commercial projects. UDI serves as a forum for knowledge, experience and research on land-use planning and development.

Today, UDI's members include land developers, land use and environmental planners, investors, financial institutions, engineers, lawyers, economists, landscape architects, marketing and research firms and architects. Together they constitute the collective forces guiding the creation and improvement of Ontario's built environment.

The institute is a partner in UDI Canada, the coast-to-coast organization representing the national interests of the development community.

The land development and construction industry is vital to Ontario's economy. In 1992, the labour force was composed of at least 658,000 workers, or one out of every eight Ontario workers. The value of all construction work put in place at that time totalled just over \$32 billion, or 12 per cent of the total economic output of this province.

Unfortunately, while the industry is so crucial to Ontario, it is also one of the most heavily regulated. Governed by 280 provincial acts, 60 codes and some 450 statutory orders and regulations and literally thousands of policies, it is an industry not even remotely out of control; rather, it is a grouping of companies that is clearly over-regulated and overtaxed.

The current government was elected on the premise that Ontario is open for business, and its stated objectives include reducing taxes and removing barriers to job creation, economic growth and investment. Indeed, a number of initiatives have already been advanced which confirm the government's commitment to reduce the extent of taxation and regulation affecting the development and home building industry.

In all of these reforms there is an understanding that economic health must be married with environmental health and a commitment to maintaining the high standards of environmental protection that Ontario is renowned for. The Bill 57 reforms and the standardized approvals approach which it promotes is a prime example of this commitment. Bill 57 will make the approvals process more appropriate and more effective by taking the province out of the business of micro-managing our industry and local government. It will also continue to protect the environment and the health of our communities. Let me explain how, at least as it relates to the activities of the development industry.

Currently, under the Ontario Water Resources Act, certificates of approval are required for all new water, sewage and stormwater management works, regardless of their scale or scope. The certificate is issued after the Ministry of Environment and Energy, MOEE, receives and approves an application and a supporting engineering submission from a proponent. The vast majority of the work consists of water distribution and sewage collection systems, which is the pipes and plumbing stations, and stormwater management facilities, which include detention and retention points which control the quantity and quality of stormwater flows. These works are designed by registered professional engineers and done to defined, well-understood practices and procedures that are based on predictable environmental impacts.

A thorough and costly technical review of the design and construction process is undertaken by the local municipality, and often by the regional municipality as well, to ensure conformity with the appropriate environmental standards. In the case of stormwater management, the works are usually subject to an additional review and approval by the local conservation authority and/or the Ministry of Natural Resources. In the end, the municipality is ultimately responsible for the operation, maintenance and ongoing performance of all these works, making the province's involvement redundant.

As such, an additional review by MOEE and the issuance of a certificate of approval is a rubber-stamp exercise only, representing duplication, added expense and little or no value added. Small- and large-scale site servicing projects are being delayed in the order of six to 10 weeks because reduced MOEE staffing levels and the sheer volume of applications prevents expeditious issuance of the certificates of approval. This delay in turn

prevents house and building construction, which at any given time totals hundreds of millions of dollars, from proceeding as quickly as possible and has at times forced projects into an entirely new construction season.

The use of these standardized approvals and the elimination of the certificate of approval would eliminate this delay and allow municipalities and the development industry to proceed with routine works under a more predictable, streamlined schedule. Development projects would be able to proceed immediately after municipal approval has been granted, providing the works meet the standardized rules or conditions.

An introduction of the standardized approvals should also result in another important improvement over the current system. Today, the province, or in some cases the regional municipality, charges a fee for the issuance of a certificate of approval, calculated as a percentage of the capital costs of the project. On a \$1-million sewer and watermain and stormwater project, the fee would amount to approximately \$20,000. It in no way reflects the true cost of processing this application, which, as we said earlier, is a rubber-stamp approval anyway.

More importantly, this fee is effectively a double charge of the municipality's review fee, which is in the order of 4% of the capital costs of the works and in our example would cost the developer another \$40,000. MOEE's certificate of approval fee, in its simplest terms, is an unnecessary and inappropriate tax which directly impacts the cost of every new house and business in this province. In fact, we found in a recent study that 25% of the cost of an average town house or starter home in the GTA is already taxes, fees and charges that total well over \$30,000. This needs to be reduced.

However, under the new system, if the project satisfies the standardized approval conditions and does not require the MOEE to issue a certificate of approval, then we are assuming that the associated fee is no longer required as well. This will translate into more cost-effective development projects and will begin to chip away at that \$30,000 number I referred to above.

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In summary, we believe the Bill 57 reforms and the standardized approvals approach are targeted to ensure that environmental regulation is simply more relevant and responsive to today's economic circumstances. We support that direction, as indicated in our submission to the Red Tape Review Commission only one month ago. We believe that the reforms will help simplify rules and eliminate duplicative red tape and fees that we encounter each and every day, costing our industry hundreds of millions of dollars annually; will replace an outdated approvals approach with a new cost-effective alternative that encourages greater local government and industry involvement; and will provide our industry with the additional flexibility and certainty that we need to continue to invest in Ontario and provide the right environment for job creation, business competitiveness and housing affordability.

Thank you. Both Reg and I would be pleased to answer any questions that the committee might have.

The Chair: Thank you very much, Mr Kaiser. That affords us two minutes per caucus for questioning. I'd

like to just remind the caucus members we have an intensive schedule this afternoon. There will be a vote in the House at 6, so I ask you to try to keep on time. This time our questioning will commence with Mrs McLeod.

Mrs McLeod: Stephen, you and I have certainly had a lot of discussions about the cost of the approvals process in terms of adding to the cost of development. Having said that, there are a lot of concerns expressed about the particular way in which Bill 57 addresses the concerns and whether it is adequate either to streamline the process to make it more efficient or in fact to provide the balance for the environmental protection.

I guess one of the questions I would ask is whether you think — and there's a vagueness to the bill. I think you'd have to acknowledge it's not very clear. We don't know the areas in which there are going to be exemptions and standardized approval regulations put in place, so there are a lot of unanswered questions. In terms of development activities, are there some areas that you feel would not be appropriate candidates to be exempt from the certificate of approval process?

Mr Reg Webster: Typically the approvals that we're talking about that we have to apply for are approvals relating to a private land developer implementing works. Those type of works are typically sewers, watermains, roads. In the discussion that we had with MOEE, and certainly in our submission to the red tape committee, there are other works — a sewage treatment plant, for example, anything that is process related, something that may involve new technology — we're not recommending that those would be included under SARs. On the other hand, it would be unusual for a land developer to physically implement those. Those are normally implemented by municipalities.

Mrs McLeod: This may be a bit of an esoteric question, but I'm curious to know if you've had a chance to look at it in detail where it allows a certificate of approval to have been deemed to be in place. I don't know if you've had a chance to look at that, whether you have any idea when that might be used, why the government would feel the need to have that power to deem a certificate of approval to be in place retroactively.

Mr Webster: I really couldn't answer that question. I haven't looked at it in that much detail.

The Chair: Ms Churley.

Ms Churley: How much time?

The Chair: Two minutes.

Ms Churley: I can't cover it all in two minutes. I'm just curious. I don't know a whole lot about sewage treatment but I do know that there are huge human health aspects to sewage treatment and it has a lot of huge environmental impacts. I just find it kind of bizarre and maybe I'm not understanding what you're suggesting there, that those kinds of megaprojects would be included in this kind of cookbook scenario — you get the recipe then go do it. As far as I know, you at this point can't even provide for stormwater management, so rather than build the stormwater pond yourself, you pay the MTRCA in lieu for them to do it. You do do that. I'm just really concerned about this suggestion, as you can tell. I think it's a bad idea for these and other reasons.

Mr Webster: As I indicated, we're certainly not recommending that they apply to a sewage treatment

plant, that type of process. We're not recommending that. It's typically the type of works that a land developer would implement, which are normally the sewers and the watermains that go in a road in front of your house.

Ms Churley: But this act was first brought in — the history of is that exactly for these reasons — downwater problems, the farmer down the road, that sort of thing, because there were class action cases and all kinds of problems. In fact, it's interesting that's why this act in the 1950s, I believe, was brought in, because so many problems can come from that kind of activity as well.

Mr Kaiser: If I could just speak to that, I think what we're saying is what is happening now and what we're a proponent of and speaking to today is that the applications we're sending off are truly being just rubber-stamped and returned. The people who are reviewing those applications in no way possess the same credentials as the people who actually are putting the reports forward, so it truly is a rubber-stamp exercise.

Mrs Barbara Fisher (Bruce): I guess that sort of leads me to my support of Ms McLeod's comments, because I am a member of the red tape committee, if you remember, and I was there when your presentation was made. I do agree with you that there seems to be an overlap of servicing here. Acknowledging the fact that we're looking for the environmental balance here, as well as practical application, I would ask you this. One sheet of your submission includes a breakout of charges, and for the record purposes, for those who wouldn't know these numbers, you exemplify a typical house in the region of York with a price tag of \$160,000, and then you are able to break out pretty decisively 24% of that being accounted to total tax fees and charges. I would suggest, perhaps for the sake of the committee, that it might be wise for us to — if not today because of a two-minute limit here, maybe if you would give us a further submission as to where you could see some type of a combination of those types of fees charges where the duplication happens because, it's the same body but another charge — some recommendations to the committee as we go through this process as to how some of those might be amalgamated or combined, and give some indication from your association's perspective of who should actually be rubber-stamping, since we do have professionals in the field who are much more adequately trained to certify and make approvals, who the appropriate body would be to in fact certify some of these processes. I think it would be very valuable to the committee if you wouldn't mind undertaking to do that.

Mr Kaiser: In answer to the question, we'd be more than happy to look at those numbers and provide something back to the committee in terms of some areas, as suggested. Truly, the taxes, fees and charges combined are a huge obstacle to home ownership for a number of people in this province. It's something that is very near and dear to our heart.

The Chair: I think, Ms Fisher, it might be more appropriate — once we're finished with this specific bill, the committee certainly does have the power to conduct hearings and ask for witnesses on topics such as the ones we are dealing with today. I think such a motion would be in order as soon as Bill 57 hearings have concluded.

Mrs McLeod: Mr Chairman, as a point of order: I wonder if there would be at that point in time further information about what new fees the governments intends to charge under Bill 57, if it has become law at that point.

The Chair: I think, Mrs McLeod, you would have every right to ask for the officials to come forward and ask probing questions at that time.

Thank you both for taking the time to make a presentation before us here today. We appreciate it.

The Chair: Which leads us now to the Ontario Mining Association. I wonder if they could come forward, please.

Mr Carroll: It's interesting, Mr Chairman, just for the record, I don't have the amount, but \$19,700 of it is in development charges to the municipality and the region.

The Chair: Thank you.

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ONTARIO MINING ASSOCIATION

The Chair: Good afternoon, gentlemen, and welcome to the committee. Again, we have 20 minutes. Feel free to divide them as you see fit.

Mr James Fisher: Thank you. Good afternoon, Mr Chair and ladies and gentlemen of the committee. My name is Fisher; I'm manager of environmental services at the Ontario Mining Association. I'm here on behalf of the Ontario Mining Association. With me is Mr Charles Ferguson, vice-president of environment, health and safety at Inco Ltd, Toronto.

By way of introductory remarks, the Ontario Mining Association, chartered in 1920, is one of the oldest industrial associations in Canada. The OMA membership consists of approximately 45 companies, of which 35 are mining companies and 10 are suppliers of equipment and services to the mining industry.

Our members make a vital contribution to the economic strength of Ontario. An Ernst and Young report commissioned by the OMA dated October 1996 states that in 1995 mining contributed an estimated \$6.6 billion in personal and corporate income, approximately 107,000 jobs and \$1.5 billion in government revenue. Given the economic significance of mining to the province, it is imperative that government and industry develop the legislation and policy initiatives which stimulate growth in this sector and, at the same time, protect the environment. The OMA has had a long-standing interest in these goals.

First, I want to talk about the Environmental Protection Act regulations, and the first part is the exempting regulations. The amendments providing for the exemption of certain activities from requiring certificates of approval, ie, the approval-exempting regulations, are acceptable to the Ontario Mining Association membership. Similarly, the OMA supports the so-called concept of standardized approvals. We believe these initiatives are positive steps in reducing bureaucratic process, and therefore protection of the environment becomes more expedient by quicker implementation of abatement measures.

The OMA is not able to comment further on these amendments because the regulations describing the substantive elements of these powers are not available.

As far as fees are concerned, our members are actively involved in environmental protection, and the OMA has made several submissions to government regarding the existing fee structure for certificates of approval. The OMA believes that fees should not be assessed for those projects which protect or improve the environmental conditions at or near a mine site. In the past, the approvals branch of the Ministry of Environment and Energy has advised the mining industry that fees for certificates of approval relate to the administrative costs of reviewing the applications for approvals.

The proposed clause 175.1(c)(iii) in Bill 57 provides the government and its agents with the authority to require payment of fees for activities which are exempted from requiring certificates of approval. In our view, this seems contrary to the fairness aspect of regulatory reform, because fees will be levied for which no review occurs. Consequently, the OMA does not support the concept of fee payments for activities for which a certificate of approval is not required.

As far as quality criteria are concerned, subsection 175.1(g) provides the ministry with the regulatory authority to define the desirable quality criteria of the natural environment. In developing these quality criteria, we strongly urge the ministry to account for the natural variability of background levels across the province. Such variability is often related to vast changes in regional geology.

This is an important consideration. Ministry field staff often rely on quality criteria data developed in southern Ontario, for example, sediment quality guidelines, and apply these values at mine sites underlain by the Precambrian Shield. In these situations, background levels are different from southern Ontario values, and the possibility of meeting these requirements is remote.

As far as the adoption of codes and regulations is concerned, the OMA is strongly opposed to adopting codes, protocols, procedures etc by reference in regulations. Referencing codes in regulations avoids normal regulatory review and results in compliance with additional pseudo-law without the benefit of stakeholder input. This method of introducing and applying such standards not only occurs within regulations but also occurs repeatedly within other legal instruments such as certificates of approval.

Past experience in the mining sector has shown that oftentimes codes and protocols were written as guides or best-practice manuals and were not drafted or intended to be used as regulatory instruments. Because codes and protocols are generally prescriptive and detailed in nature, they would add considerably to the red-tape burden on the industry with little or no benefit to the environment.

The incorporation of codes significantly adds to the regulatory burden, introduces considerable confusion because of poorly drafted detailed requirements and enhances the associated liabilities of non-compliance. For example, five protocols are referenced in the existing metal mining sector MISA regulation. One of these protocols contains over 160 pages. This regulation stipulates compliance with all these protocols, resulting in thousands of prescriptive requirements and an additional 343 pages of text added to an already complex and onerous 12-page regulation.

Codes, protocols and procedure manuals are useful tools but they should not have legal effect. Clearly an alternative approach is needed to address this situation, otherwise the regulatory streamlining will never, in reality, be fulfilled.

Under the Ontario Water Resources Act, the amendments that we'd like to speak to deal first of all with the closure of waterworks and sewage works.

The Mining Act requires mining companies to file closure plans with the mining and land management branch of the Ministry of Northern Development and Mines. These closure plans address the closure of waterworks and sewage works. The proposed amendment to subclause 75(1)(s)(iii) deals with the closure of such works and does not account for the requirement of closure plans filed pursuant to the Mining Act.

In the interests of reducing red tape, the OMA believes the government should recognize the closure plan requirements and perhaps exempt such works from this section.

In summary, I would just like to say that the Ontario Mining Association supports the efforts of the government in reducing bureaucratic process while at the same time maintaining environmental protection. The OMA would be pleased to participate in the review of the draft regulations pursuant to the amendments set out in Bill 57.

The Chair: That affords us just over two and a half minutes per caucus. This time the questioning will commence with Ms Churley.

Ms Churley: Thank you very much for your presentation. I'm wondering if your support of this bill to some extent is conditional on what the regulations say. For me, it's a problem not having regulations in front of me and I'm just wondering how much of a problem that is for you in terms of your support.

Mr Fisher: As I mentioned earlier, it's difficult to make any positive support comment without seeing the draft regulations, but we do support the concept of exemption regulations and standardized approval regulations.

Ms Churley: But in terms of what's on that list — and that's a problem for me; we don't know what's going to be involved yet. I think everybody supports reducing red tape. We have differences of opinion of course on what that means, which we won't get into here.

I wanted to quickly ask you, you mention the protocols and you're saying that clearly an alternative approach is needed. Do you have suggestions for an alternative approach, which the Chair will allow you to answer right now in probably the 10 seconds you have left?

Mr Charles Ferguson: I believe we should be obliged to satisfy the requirements in the regulations. How we go about it — good management practice — should be our decision. How we manage ourselves, how we operate should remain a management tool; that should not be included in the regulation. Tell us what you want; don't tell us how to do it.

Mr Fisher: And as far as the incorporation of protocols into regulations, it seems to me, as I mentioned, that these are primarily designed as operation manuals and not for legislative purposes.

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Mr Bart Maves (Niagara Falls): Thanks very much, gentlemen, for your presentation. We've heard a few

examples of things that people believe should have standardized approvals and not be subject to the current approvals process in different industries. I wonder if, off the tops of your heads, in your industry there are some glaring examples of things that you could give us that don't really need to have a whole approval process.

Mr Ferguson: Yes, I could think of a few. Typically, in a mine, because the air in northern Ontario gets cold in the wintertime, you have to put heaters in the air that goes down underground. So you buy these very large gas heaters to heat the air that goes underground. You have to get each one approved.

Who's going to change them? It's like buying a furnace in your own house. You don't have to approve that. You buy a heater or something and you install it. There isn't any contribution made to examining the fact that you're going to a store and buying a heater to install to warm up air. That's the kind of thing that one would assume, since you can predict the outcome, since it's standard equipment, that does not need any examination. We might have 150 of those, which means that we have 150 certificates of approval for them. I'm sure the Ministry of Environment and Energy would love not to have to approve those either.

Mr Ted Chudleigh (Halton North): If you have more than one heater, do you have to have more than one approval?

Mr Ferguson: Yes, because I'm talking individual ones. There'd be 150 separate ones.

Mr Galt: Just to put on the record the fact that we've been talking about standardized approvals under conditions that are predictable and controllable and understandable. We did distribute a little earlier some candidates for possible standardized approval regulations, so it is in front of you and available. Some suggestions; it's certainly not the total list. I'm sure there's going to be all kinds that can be identified as the years go by, but certainly these are some examples that may be looked at and used.

Mrs McLeod: You're not the first presenters who have expressed some concern about the fact that under the bill, the regulatory process could in fact become quite prescriptive; not necessarily so, but it could.

The area I'd like to ask you about is, you're the first I've heard who has pointed out the concern about the variability from one region to another. It's something I agree with and I think we have to be very conscious of in any kind of regulation the government does. How do you reconcile that with the support for standardized approvals? Do you see a tension between those two things?

Mr Fisher: What we're talking about, in terms of taking account of regional variability, deals with the quality criteria and not necessarily standardized approval for various pieces of equipment.

Mrs McLeod: So can I take from that then that when you express support for standardized approval processes or the exemption, there are very specific things that you would see as appropriate candidates and there are other things that you would see as to be entirely inappropriate because it would not reflect some of the realities in different regions?

Mr Ferguson: Perhaps I could contribute here. When quality criteria developed, if the area of Ontario is limited

to southern Ontario where there are no metals, you're not going to find any metals and you're going to have very low background levels. But northern Ontario is underlain by the Precambrian Shield and you can often find mines by looking at sediment values because soils often reflect the minerals which they were ground down from and produced from.

The presence of heavy metals, the copper, nickel, lead and zinc that are mined in northern Ontario, are found in the soils and they're going to be vastly different from the kind of soils that one would find in typical southern Ontario soils where there's a complete absence of metals. So when you've set the standard background levels, you can't exclude where you find them and I don't think it's logical to expect the natural background in soils around mining companies to be the same as the natural background in Huron county, as an example.

The Chair: Thank you both for taking the time to make a presentation before us here today. We appreciate it.

CANADIAN INSTITUTE FOR ENVIRONMENTAL LAW AND POLICY

The Chair: Which leads us now to the Canadian Institute for Environmental Law and Policy, if they could come forward. Good afternoon and welcome to the committee.

Ms Anne Mitchell: Good afternoon, Mr Chairman. Thank you very much for the opportunity to come and address you today and also to the members of the committee.

My name is Anne Mitchell. I'm executive director of the Canadian Institute for Environmental Law and Policy, and I have with me Dr Mark Winfield, who is the director of research of the institute. I'm going to make a few introductory remarks. Dr Winfield is going to look at several of our specific concerns with Bill 57 and then I'm going to make a couple of concluding remarks. But before I do that, I'd like to give you a little bit of background about CIELAP.

The Canadian Institute for Environmental Law and Policy was established in 1970, so for 25 years we have been working on developing laws and policies to protect the environment in the province of Ontario and Canada.

We were established in response to the continuing need for objective analyses in environmental law and policy. We're independent of both government and industry. We're a national, charitable, not-for-profit research and education institute committed to reforming environmental law and public policy for the public good in Canada.

Our mission is to provide leadership in the development of environmental law and policy that promotes the public interest and the principles of sustainability, including the protection of the health and wellbeing of present and future generations and of the natural environment. We've been doing this work for 25 years in this province.

We're pleased to be given the opportunity to address your committee on Bill 57. We're deeply concerned by the contents of this bill and we don't support it in principle. It's our view that the bill proposes some of the most significant amendments to be made to the Ontario

Water Resources Act and the Environmental Protection Act since their enactment in 1956 and 1971.

We are disappointed and concerned by the short time period which has been provided for presentations to your committee and therefore the small number of witnesses who probably have been able to appear.

We feel that Bill 57 requires careful study and consideration by your committee. The bill raises a number of very serious legal and constitutional issues. The bill proposes an extraordinary grant of authority to Lieutenant Governor in Council over matters dealt with by the EPA and the OWRA.

In addition, in our view, it would limit the rights of Ontarians to protect their persons and the enjoyments of their property from environmental harm as a result of government negligence. It would permit certificates of approval to be deemed to exist under the EPA and OWRA under certain circumstances, and it would allow municipalities to be designated as directors for the purposes of the EPA. The bill would also dissolve the Environmental Compensation Corp and the Ontario Waste Management Corp.

I'm now going to ask Dr Winfield to address some of our specific concerns with the bill.

Dr Mark Winfield: There are eight areas which I'm going to address in my remarks as briefly as possible. The first relates to the proposed addition of subsections 175.1(a) and 175.1(b) to the Environmental Protection Act and the parallel addition of subsections 76(a) and (b) to the Ontario Water Resources Act.

The language contained in these sections is extraordinarily broad, and the proposed amendments would permit the cabinet effectively to exempt any person or activity from the requirements of either act. This could, for example, involve the waiving of existing statutory requirements from public hearings before the approval of major landfills or hazardous waste incinerators.

The bill would also permit the cabinet to make regulations controlling or prohibiting virtually any activity which falls under the jurisdiction of the EPA or the OWRA. In effect, the bill would permit the cabinet to repeal virtually any provision of these statutes and to replace it with whatever it chooses to put in place.

This raises serious questions concerning the potential for arbitrary decision-making and, more broadly, the impact of such provisions on the principles of the rule of law and of responsible government.

Drafting of this nature contradicts the clear recommendations made by standing committees of this Legislature, the federal Parliament, regarding the drafting of enabling legislation and specific recommendations regarding the avoidance of precisely this kind of drafting and the need for the Legislature to provide clear policy guidance in its drafting of legislation. Clearly those recommendations are not being followed in the drafting of this bill.

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We are also deeply concerned by the proposed bar on civil actions in relation to exemptions granted from the provisions of the Environmental Protection Act and the Ontario Water Resources Act approvals process. In effect what the bill is proposing is a bar on civil lawsuits by individual Ontarians against the government if their

property or their persons are damaged as a result of exemptions from environmental law as granted through the bill. This is really quite a remarkable provision because in effect it is an admission by the government that harm to property or persons is likely to occur as a result of exemptions granted from environmental laws under this bill.

Third, we are concerned by the proposed designation of municipalities as directors for the purposes of the Environmental Protection Act. The scope of this designation is unclear and, as drafted, is essentially universal. We have very serious concerns about the capacity of municipalities to take on the responsibilities of the ministry, particularly in the context of reductions in provincial funding to municipalities which have been made by the government. We have concerns about the potential for conflict of interest where municipalities are in the position to grant approvals for undertakings for which they are in fact the proponent or the sponsor or the supporter, and we're also concerned about the implications for the accountability of decision-making to the Legislature under these statutes when municipalities are in effect making decisions on behalf of the minister.

Fourth, we are concerned about the provisions that permit the deeming of certificates of approval to exist under the Environmental Protection Act and the Ontario Water Resources Act. We assume that this is related to the as-yet-undefined standardized approval process, but we don't know, and the language is in no way limited to that. In effect this would allow the cabinet to deem that a certificate of approval exists regardless of whether there's been review by the ministry or not. We are deeply concerned by this because, first of all, we're not actually clear on the legal status of the deemed certificate, and we've consulted with many legal experts and they don't know. There is a potential that it does provide statutory authorization as a normal certificate of approval would, and that has quite serious implications in terms of limiting the rights in common law of owners and occupiers of lands to take action to protect their property from damage as a result of pollution.

Fifth, we are concerned about the provisions related to the imposition of fees under the Environmental Protection Act and the Ontario Water Resources Act. In principle, we support the notion of the province attempting to establish a cost recovery regime for the approvals system. However, we have a lot of concern about the breadth of the drafting of these provisions and, in particular, the potential that members of the public might be charged fees for access to documents and other materials related to proposed environmental approvals, and that obviously has implications in terms of accountability and the ability of members of the public to participate in decisions.

Sixth, like a number of the industry representatives you've heard today and earlier, we are concerned by the proposals related to the incorporation of codes of conduct into regulations. There are serious concerns about the processes by which such codes might be developed. Typically, if they're industry codes, that process has been limited to the members of the industry in question. There are questions of accountability, the appropriateness of their drafting, and there are also quite serious concerns,

if these codes are to become part of public law, about their accessibility to members of the public. Our experience has illustrated that these things are often hard to get hold of and when you can get your hands on them, they turn out to be extraordinarily expensive to get a copy.

Seventh, we are concerned about the dissolution of the Environmental Compensation Corp. We are frankly baffled as to what the justification for the dissolution of this organization is. It appears to have been performing a number of important functions very efficiently, in particular ensuring that innocent victims of spills and innocent parties who take action to clean up spills voluntarily receive compensation, and it's not at all clear to us why this organization is being dissolved.

Finally, with respect to the dissolution of the Ontario Waste Management Corp and the repeal of the OWMC act, we have no objection to the notion of repealing the OWMC act per se, but this leaves unanswered all the questions around the handling of hazardous waste and liquid industrial waste in this province which led to the creation of the corporation in the first place. We note that the ministry's own generator registration database and data available through the national pollutant release inventory and also the Provincial Auditor's report from last week all point that there continue to be quite serious problems in this area. There is some initial evidence that in fact these problems might even be growing. As a result, the institute, if no one else intends to, does intend to conduct a policy review in this area in the coming months.

Ms Mitchell: In conclusion, as you can see from our statement, we are concerned about the provisions of this bill. It appears to have been drafted to provide extremely broad enabling authority to the Lieutenant Governor in Council before the government itself understands how this authority might be used.

The passage of the bill under such circumstances would, in our view, set a dangerous precedent. The effective result of the bill's enabling provisions would be to permit the Lieutenant Governor in Council to replace the EPA and the OWRA with whatever it chooses to put in place. No further reference to the Legislature for authority to expand, amend or repeal the most basic elements of environmental law in Ontario will be required. Seen in this way, the bill constitutes an attack on the principles of the rule of law in that the executive, rather than the Legislature, would now be in a position to establish the parameters of its own authority. Bypassing of the Legislature in this manner also raises a serious challenge to the principles of responsible government.

Given these considerations, we would recommend that Bill 57 does not go forward in its present form, that the bill should be withdrawn and the government should come forward with new legislation seeking the authority to implement specific proposals for the reform of the environmental approvals process once these proposals have been fully developed.

I'd just like to finish with a comment. I don't know if you've seen the information from one of the Environics polls: How should governments deal with the environment while cutting budgets in all areas? Of those polled, 30% of the public say the government should respond

quickly and make laws stricter; 52% say the government should respond slowly and continuously, making laws stricter; 13% say the government should maintain existing laws but not make them stricter; but only 3% say to remove some requirements from existing laws. I'd ask you to consider that as well in your deliberations.

The Chair: Thank you. That affords us just slightly less than two minutes per caucus for questioning. We'll commence this round with the government.

Mr Carroll: I believe very strongly in the need to protect the environment. We all need to live in this world here. There is a situation that was pointed out to me in my constituency of a company that wanted to improve its environmental discharge by putting in a new piece of equipment. They couldn't do it until they got approval. To discharge something as innocuous as warm air into the environment requires environmental approval. Will you not accept the fact that there are several activities that, with proper standards in place, we could trust people to go ahead and do without the need for government intervention? Is there nothing that we can do?

Dr Winfield: I think the rules which have been established over the last 25 years — it's a myth to think that it has at any time been easy to make environmental laws and environmental standards in this province. It's been extraordinarily difficult. We start from the assumption that the rules which exist have usually been put there for a reason, usually related to disaster or merely apprehended disaster. One needs to think very carefully about removing those kinds of rules. There may well be some cases where such changes are appropriate, but they need to be examined very, very carefully and thought through very, very carefully before proceeding.

We've reviewed the government's proposals for regulatory reform in great detail. We submitted a 70-page brief in response. We've been through the ministry staff's own notes on the regulatory reform proposals, and we just don't see either this ministry's staff's notions or any reflection on the history of how we got here in what the government has proposed. I don't know how else to put it. We are in favour of sensible reform of environmental regulation. It's part of what we've worked for for 25 years. But it's not what we're seeing.

Mrs McLeod: I appreciate the work you did on this brief and look forward to reading it in detail. I appreciate your presentation had to be a bit rushed.

I was pleased to see that you had spent some time on this whole issue of deeming, so I'll just take a minute and ask you to reflect further on that, because you've offered some legal concerns. I guess I'm asking you to take a guess at intent. A lot of what we're doing with this bill is guessing at what intent might be. Do you have any sense of why the deeming provision would even need to be here when the exempting provisions are so broad? Can you imagine any situation in which deeming would somehow be used as opposed to a straight exemption?

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Dr Winfield: I think what they're contemplating, as I understand it — and as I say, none of this is clear at all. It's very fuzzy in the Responsive Environmental Protection consulting paper and even in the technical annex what it is that is actually proposed. It seems that what the

government intends is to exempt certain categories of activities altogether from the approval process, and then with certain other categories of activities to continue to require some sort of permit-by-rule system where you'd have to demonstrate some compliance with some kind of code, and when you did that, that is when the deeming process would kick in. You would in effect file a notice with the ministry that you had complied with some code or some standard, and then these provisions would be used to automatically deem that a certificate exists. I think that's the use they intend. So in effect an approval would be said to exist even though there had been no formal review by the ministry.

Mrs McLeod: I appreciate that.

Ms Churley: Were you consulted? Was CIELAP consulted on these changes for this bill? Were you consulted in any way?

Dr Winfield: No.

Ms Churley: Mr Chair, I just have to say and put on the record that I find it absolutely appalling and disgraceful that an organization with high-quality environmental lawyers and policy experts has not been consulted about changes to something they have been involved in for 25 years. I think that's part of the problem we're having here with these laws and changes being developed without consultation. I know there are huge differences between the government's concept of protecting the environment and the environmental groups'. That's clear. But to leave them out is just creating this big gulf between the two which is getting worse.

You have presented to us some really important legal implications to this bill as well which have not been, in my view, taken into account.

I guess because there is so little time I just want to thank you for at least coming before the committee and presenting us with some of the problems that you see with the bill. Hopefully we will have some clause-by-clause time that we can take the opportunity to review your comments, and perhaps all of us together can find ways to make amendments that can reflect some of the major concerns you have about the bill.

The Chair: Thank you both for coming and appearing before us here this afternoon. We certainly appreciate it.

ONTARIO FOREST INDUSTRIES ASSOCIATION

The Chair: Next up will be the Ontario Forest Industries Association. Good afternoon and welcome to the committee.

Ms Marie Rauter: Good afternoon. I can say that you must really be committed to the task, because I haven't seen any one of you get up and wander around, and it's awfully warm in here.

Interjection: We're not allowed to do that.

Ms Rauter: Oh, you're not allowed to do that. Sorry about that.

Well, thank you very much, and thank you for giving us this opportunity. I am Marie Rauter, president of the Ontario Forest Industries Association, and I have with me today Craig Gammie, who is our manager on environment and energy issues. I am probably going to give you a relatively short presentation, so we'll either have lots of time for questions or I'll get you ahead of schedule.

A little bit of background. We are the Ontario Forest Industries Association. We are a trade association. We represent 20 member companies. Some of our companies are large pulp and paper companies and some of them are small, family-owned sawmills that have been in existence for several generations. Our companies perform forestry operations and manufacture pulp, paper, paperboard, lumber, plywood, panelboard, veneer, the total gambit of forest products. We represent an industry which employs about 63,000 Ontarians. We have sales of \$11 billion and we have international exports of \$5.3 billion. We are one of the largest exporting industries and help to contribute to our balance of trade.

As an industry, we are committed to good stewardship of our air, our water and our land resources. In addition, we recognize the importance of ensuring that the environmental protection system is efficient and that environmental expenditures, both private and public, provide the best possible environmental return.

We are thus supportive of the thrust and the momentum of the Ministry of Environment and Energy regulatory review process and the proposals as described in the discussion document *Reforming Environmental and Energy Regulation in Ontario*. The document does indicate an understanding of the regulatory reform challenge, and it is a challenge; namely reducing costs and barriers and, if I can only emphasize, without loss of environmental protection. I think sometimes when we talk about reducing costs, we lose sight of the need still for environmental protection, and it provides a platform for moving into implementation and for moving us into the future.

As part of our contribution to the regulatory review, we identified some of the limitations inherent in a traditional regulatory approach to environmental protection and have, in our submission to the MOEE entitled *Beyond Compliance: Toward a Continual Improvement System of Environmental Protection in Ontario's Forest Industries*, proposed an alternative to the traditional regulatory process. It's a process based on the philosophy of continual improvement. We feel that moving to the continual improvement approach will reduce costs of the environmental protection system while maintaining environmental integrity.

I have several copies of *Beyond Compliance* with me, and for any of you who have not seen it, you're more than welcome to have a copy. I have copies for distribution afterwards.

In keeping with our *Beyond Compliance* philosophy, our members support any government initiative which can reduce process, which can improve effectiveness and efficiency while still retaining a commitment to environmental standards. We believe this legislation helps to meet these goals.

In particular, we support the provisions of Bill 57 which amend the regulation-making authority of the Ontario Water Resources Act and the Environmental Protection Act to allow the application of standardized approval regulations to all types of approval, including air, water, sewage and solid waste.

Approval: We require certificates of approval for just about any equipment or process change for which air

emissions are involved. EPA section 53 also requires certificates of approval for just about any equipment or process change for which emissions to water are involved. For the pulp and paper sector, these C of A requirements are not only extremely costly but also, we feel, environmentally unnecessary. Thus we are supportive of the proposal to develop and to use alternatives to these formal C of A requirements, namely approval exemption regulations and standardized approval regulations.

To give you some examples, over the past several years the cost to the pulp and paper industry alone for preparation and submission of C of A requests and for payment of fees has been not in the thousands but in the millions of dollars. The existing framework of federal and Ontario statutes, regulations and guidelines, when considered exclusive of C of A requirements, provides that broad and comprehensive regulation of the pulp and paper industry. C of As address the same issues as are addressed by the existing statutes, regs and guidelines. There is, therefore, a very costly overlap and duplication of purpose.

We feel that in addition to the high costs associated with the C of A process, the entire exercise has not resulted in any additional environmental benefit or protection beyond what is provided by existing statutes, regulations and guidelines. The whole formal approvals process seems redundant and unnecessary.

A case in point are the C of As required for installation of secondary treatment facilities at Ontario pulp and paper mills over the last few years under the Ontario Water Resources Act. These treatment systems were designed by qualified, experienced consulting firms, yet a C of A which included a government review of the design was required for each system. You heard earlier that one was required for each heater; we require one for each system. These C of As provided no additional value to the environment in the form of better protection, or to the industry in the form of better improvement or improved process, or to government. But the C of As were costly; it cost our companies \$100,000 per mill for fees alone. The sole net result or outcome of these C of As seems to have been only red tape and paperwork.

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We feel that the best alternative to the approvals process for these types of undertakings is exemption using the AERs, or the approval-exempting regulations. From our perspective, for pulp and paper facility water and air emission control applications, such AERs would minimize red tape and cost while maintaining environmental confidence. On the other hand, we are aware that there is reluctance to developing these for such major activities.

The SARs are less preferred but are a viable alternative to the formal approvals process and, if developed for our industry, would eliminate much unnecessary duplication of effort and associated cost. In addition, we understand that there is little reluctance to developing and using the SAR tool. We therefore support the development and use of these as regulatory instruments and support that part of Bill 57 which provides for the use of standardized approvals for air, water and sewage applications.

On the issue of fees, we would like to see section 175 rephrased so that fees would not be charged for any activity that would reduce emissions. Fees for emissions reduction projects are a punitive disincentive, while waiving fees for emissions reduction initiatives provides incentive to proactively improve environmental performance.

In conclusion, we support the thrust and the intent of this legislation and we believe it will help to improve the efficiency of environmental approvals. We would, however, like to see it go a step further and show that the government supports the emission improvements of industry by eliminating any approval fees for emissions reduction undertakings.

I also would like to respond to some comments made by an earlier presenter when I first came into the room with respect to this document, Bill 57, and some of the other regulatory changes, saying that there were no standards for industry, that there were some real problems with the reduction of the AOX, that we were eliminating the problems that we had with toxicity.

In our Beyond Compliance we have a proposal put forward where it would establish standards between industry and government. It would be a contractual agreement. For any of you who remember the forest management agreements, those were contractual agreements between industry and government. If you have that kind of contractual agreement, you can establish your priorities. You would establish your environmental priorities for the province and then, on a company-by-company basis, you can establish environmental priorities for a particular region. If you're on the Great Lakes it's going to be different than if you're in a northern community, and if you're on the water it's going to be different than if you're off the water. You have that kind of flexibility.

What you also have the ability to do is to move beyond the traditional approach of regulation. When we started thinking about the environment, regulation was the way to go. It was our first step. But as society progresses, there are alternatives to regulations. Regulations, in our view, are managing to minimum standards. You only manage to what your competitor has to manage for. If you're into a continual improvement process, you go beyond those minimum standards, you eliminate a lot of uncertainty that you have in regulations and you can use your commitment to environment and moving forward as a competitive edge. Continual improvement can really be used as a positive tool for moving the environment yet for reducing a lot of the red tape, a lot of the process, a lot of the costs that we have in the traditional regulatory framework.

The Chair: I certainly don't mean to impinge on your time, Ms Rauter. At the outset, I didn't know if you were joking about letting us out early. I just wanted to pose to the committee that there will be a vote and the bells will start ringing at five to six. We have one more presentation afterwards. I'm just wondering whether you would be so disposed if we were to either reduce the time slightly and just ask for brief comments from each of the three members, or alternatively, if we could come back after the vote if we have to split the presentation time.

Ms Churley: I'm willing to skip my question.

Mrs McLeod: I have just one very brief question, and it partly reflects the fact that the act is so broad and vague that I am having trouble getting a sense of its reach. Could you just tell me whether, when it comes to the exemption from certificates of approval, any areas that might be a candidate for that as it relates to the forest industries would have any relationship at all to the work that was done in the past EA on timber management?

Ms Rauter: Our Beyond Compliance proposal very closely relates to forest management agreements and some of the things that happened there. I find this legislation close to the enabling legislation that was put in as the Crown Forest Sustainability Forest Act. What we had some difficulty with there, though, is that we did not have the regulations in place. Here at least we have that regulatory review. This piece of legislation, in combination with the regulatory review, in combination with our Beyond Compliance, gives us some of the tools to move forward. I don't think you should look at one in isolation of the other ones. If you look at all three — and I seriously would like you to take a close look at Beyond Compliance, because it gives you a way of ensuring environmental protection while reducing process and red tape, and lets things move forward very quickly. That doesn't mean government still isn't there to come in and do spot audits to make sure industry is doing well and moving forward, but it all has to be done together and then to move forward together.

Mr Galt: Thank you very much for the excellent presentation. We certainly appreciate the input.

The Chair: Thank you, Ms Rauter. I appreciate your indulgence. Perhaps if you could leave the clerk a copy of that, the tradeoff will be that I'll arm-twist all the members to ensure they read your report.

Ms Rauter: I would invite them all to read it and I would invite all of you to please give me a call and ask questions, because it's one way to offset the concerns that you're going to be getting from some of the environmental groups and also for government to cut back on process and costs but still ensure environmental protection.

MARY FIELD

The Chair: With that, we're on to our last presentation of the day, Mrs Mary Field. Good afternoon.

Mrs Mary Field: Thank you, Mr Chairman and committee members. It's certainly a privilege to come all the way in from my little farm in Port Dover to speak to this group. I have a brief video which they're working on. We'll wait until they're finished, because I would like the remote to fast-forward through parts of it.

The Chair: I'm told we don't have a remote.

Mrs Field: With your indulgence, Mr Chair, we'll just slip through this. I'm going to ask them to push fast-forward at various moments.

This, for example, is a boar that was in the top 10% of the genetic herd in the province and in Canada, which convulsed and died as a result of a pollutant.

If you could just fast-forward for a few minutes, this shows thin, emaciated pigs that are — oops, we went past

some abortions. It's really going. I think you get the general idea: We had abortions.

Here's an animal, a beautiful purebred Yorkshire sow. There's a death. Here's another one that as a result of salt poisoning died shortly after that. You see it staggering around. We had abortions, we had stressed animals and a tremendous amount of losses. This animal here has lost the control of her back legs. We had many like that that were not recoverable in any way. They had to be disposed of. Here's another tail-bitten one that, again, had to be disposed of. You can fast-forward it, please. I think that's about it.

That's just an overview. Sometimes visuals give you an impact of what we live through at home.

The issues that I wish to address are the following: liability insurance, the Environmental Compensation Corp and language as an exact art.

A case background: My husband, Jim, and I have farmed for many years. We have earned a reputation in our industry as being honest, fair and producing a high-quality, high-health purebred pig. It is a competitive industry and we have competed, shipping animals all over the world.

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In 1987 we decided to develop an excellent health status herd. It required you to completely depopulate your herd, and piglets taken by Caesarean section went into building up the number of breeding animals in our herd. Our livestock was in demand to help other producers improve their herds, a move supported by the Ontario Ministry of Agriculture and Food to upgrade the health of the provincial herd. As you may know, Ontario's high-quality pork products are in demand around the world as a result of health and genetic efforts like ours. In 1990 we were ready for our first full year of production. An environmental spill ended that.

On liability: In mid-January 1990 our herd was demonstrating many strange problems. On the 29th a mature purebred Yorkshire boar convulsed and died. Piglets in the nursery were dying because their mothers were not milking. It got much worse. Keep in mind that these were purebred animals and our livelihood. We discovered the problem was a spill of salt solution from a gas well drilling operation on a farm north of ours.

The Ministry of Natural Resources and the Ministry of Environment were called. Each felt it was the other's problem. Both did come, but MNR, which was responsible for the issuing of permits and establishing guidelines for the gas well and responsible for the protection of our fresh water as a result, had to have the location of the fresh water wells in our area faxed to them from the Ministry of Environment. I believe this is an argument for one ministry to oversee natural resources and the environment. These ministries often overlap and appear to work at odds with each other. Combining them would be more efficient, with one bureaucracy, and effect a big savings. It sounds like a commonsense solution to me.

MOE charged the well owner with polluting our fresh water source and he was eventually fined. Extensive testing by MOE provided the proof to do this, along with the past water tests that we had on our well.

In the meantime we were, and still are, having a very difficult time as a result of our sizeable losses. I made

many phone calls — hundreds might be accurate — pleading for assistance to help us through the courts. We finally met with Howard Hampton, the Minister of Natural Resources at the time. We were then told about ECC. Our application was filed. We were instructed by ECC to sue everyone who stood to gain from the drilling of the well in an effort to recoup our losses, and if we were unable to collect we were to come back to ECC. I'd like assurance on this issue, that we will be treated fairly on this.

Suing for damages is a costly, long process. The land owner is an elderly widow lady. Suing her caused us much distress and many neighbours turned against Jim and me. The well driller was very hard to locate and claims to have no insurance. The well owner, we are told, has no insurance.

Please make liability insurance a mandatory part of getting permits for any environmentally sensitive work. In Honourable Mr Sterling's comments on Bill 57 in Hansard, September 25, page 4165, he states, "The court system remains there for people to gain compensation from those responsible for the spill." How and with what? Here we are faced with getting money from two government-licensed individuals who are not insured. How would that make you feel? After losing thousands of dollars' worth of livestock and potential sales as a result of this incident, money is difficult to find to continue our operation, let alone fund a lengthy court battle.

In his reasons for judgement following the charging of the driller in our case, Judge W. Brian Stead stated, "The Fields and the Masons" — that was another farm affected — "and other members of the public had no knowledge and no ability to control the situation." In his reasons for sentence, Judge Stead stated, "The general public has no way to protect themselves from situations such as arose in this case."

As an affected taxpayer, I implore this government to correct its legislation. This will happen again. Let us have a plan of action and protection for those affected. Governments are protectors of the public and, as such, a program like ECC should be in place as an avenue of last resort.

I believe land owners in an area where drilling or other environmentally sensitive work is going to take place should be notified. We had absolutely no knowledge. We might have been prepared through veterinary assistance and what not had we had knowledge of what was coming down the line at us. Water samples should be taken to establish water quality before any activity. Water is a very precious commodity. Issuing permits for this work should have mandatory liability insurance as a requirement. What better way to make this industry responsible for their actions? The insurance companies must be reliable also. The insurer for the land owner we had to sue has abandoned her.

I have covered my point on insurance and the need for it to be mandatory to protect the public and make the operators responsible. Now I'd like to speak on the Environmental Compensation Corp.

Careful examination will show that the program of support in ECC is good. It is the cost of administration that is the problem. Could this program not be dovetailed

into a ministry only to be used as the need arose? I see the program as our source of last-hope survival. Lack of protection by government has left us, and probably many like us, unprotected and possibly unable to collect from the courts. However, we will have the heartache and the cost of trying.

I feel confident that with this brought to your attention you will correct the legislation for the future. Until these corrections are made, and for those of us caught in the middle of change, ECC, the program, must remain. In fact how would you have victims fund court action? I know as a taxpayer I helped Paul Bernardo, yet we have done no wrong and we are cut adrift to fend for ourselves.

My third point is one of language. In regulation 175 is a long list of "may make regulations exempting any person, licence holder, insurer, industry, contaminant" — it goes on and on and on — "or thing from any provision of this act and the regulations prescribing conditions for exemptions from this act and the regulations." Am I wrong? I looked at this and I thought, whoa. I believe this is a fun issue for legal types and interpretive bureaucracies. I read this over to a younger daughter and I said, "I think grade 8 students should write acts because they haven't learned the art of elongating the English language yet."

Why, for example, would you write, "A regulation may be general or particular in its application, may be limited as to time or place or both and may exclude any place from the application of the regulation"? What does that mean? I may be very wrong, but this looks like an interpretive nightmare too, and I'm wondering why.

The language of the law and its rules and regulations should be clear, concise and leaving no room for interpretations. The way some of this is written is a fence-sitting coward's way of leaving loopholes. Those in the position of enforcing the law and its rules and regulations should be held responsible for their actions or lack of them.

Jim and I have been the victims of a crime and as victims of a crime have been victimized. In the beginning there were some in positions of power who tried to blame us. Comments like: "Are you sure you didn't feed too much salt in your ration?" "Maybe some manure spilled in your water," or "Why the fuss? It's only pigs." There's been the terrible ordeal of suing the widow neighbour, the fallout from that. There's been the burden of financial hardship. Our interest in this bill is very deep and very emotional. We have lived the fallout from a spill that has seriously affected our lives for the past six years.

Therefore, I hope I have been able to impact the thinking of this committee to make improvements and meaningful additions to this bill. Further, I hope this committee will assure us that we will remain protected if we are unable to collect our significant losses through this long, tortuous, slow, inefficient court process.

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In your little packet that I left here, there are two copies of water tests, one taken in 1990 and one in 1992. I draw your attention to the chloride and bromide. These are both substances from very deep. You will find that the 1990 sample right after the well was identified as the problem shows our chloride at 600 times the level that it

is in 1992 after the well was properly sealed; and the bromide at 523 times the regular level that was identified in 1992.

I have a letter here from a fellow we export through regularly. We have a herd that's known and we have had the privilege of exporting through him around the world. As a result of our problem, he was unable to attend our herd.

I also have a letter here from our MP, Bob Speller, addressing the fact that Herb Grey, in his riding, identified water problems.

I have a letter here to Mike Hunter from the Ministry of the Environment, consulting him on the fact that they believe the gas well to be the problem.

Last in your packet, a rather poor photocopy, but you will see a little thing on water matters. In the corner you will see, "Who's Going To Monitor Jarvis' Natural Gas Problem?" I'd like to draw your attention to, hopefully, what I have underlined, that it's no longer under the jurisdiction of the MNR. At the top of this article you will see that the Ministry of Environment and Energy is responsible for fresh water, but this is from a gas release, so we can go back to MNR for consultation; in other words, more confusion and more to add to my argument that it should be one ministry.

I hope I get your support in insisting that mandatory insurance go with permitting anyone doing anything like this, because Jim and I are in a dreadful situation and I know that we are not alone. Thank you.

The Chair: Thank you, Mrs Field. So far we're lucky, but I think we're going to hear the bells ring any second. The clerk checked and we're told that this clock is three minutes fast, so I think we only have about a minute or so. The questioning this time commences with the NDP, if you have a brief comment, Ms Churley.

Ms Churley: I do. This is something I've pointed out a couple of times to the government members that we needed to take a closer look at. It's very good that you came here today, because you put a human face on it. We often talk in these rooms about the abstract of environmental regulation and deregulation. Having us shown the human face of the tragedies that happen when there is a spill or a problem is very, very important to all of us to see. What I hope is that Dr Galt, the parliamentary assistant to the Minister of Environment and Energy, will do three things as a result.

I like your idea of the insurance and that at the very least — and I'll be putting in an amendment to this effect — any person who came in under the ECC will be grandparented in and not left hanging there, people like Mary; third, as you wind down the ECC, that you will find another way to have in existence the same kind of program that will be the payor of last resort, because that in fact is what it was — do I hear the bells going yet? — and why so little money was put out. I think those are three very good suggestions that could help you.

Mrs Field: Just one short comment: I don't see the ECC program as being the problem. Even in reading the minister's comments, it was the cost. Certainly in our case I see a terrible thing happen if we don't have that resource to fall back on.

Mr Galt: I have to run after the vote. I would like to discuss this with you further. If I can get your phone number, I'll call you tomorrow to explore this further.

One question: Did you get a diagnosis from a veterinary or a veterinary pathologist?

Mrs Field: Many.

Mr Galt: Okay. I didn't see it in the attachments.

Mrs Field: There was no question. The water was so high in salt that it was —

Mr Galt: Actually, you can get salt poisoning in swine without extra salt by simply withdrawing water for 12 hours and putting them back on water. They can come down with salt poisoning.

Mrs Field: But you see, Dr Galt, we have pages and pages of water sampling showing the level of salt in the water. The water was the problem and our veterinarian had the water shut off and would not allow it to be turned on again until it was proper.

Mr Galt: I'll spend 15 or 20 minutes with you tomorrow on the phone. I need to talk to you about it.

Mrs Field: Great. We appreciate that. Thank you, Dr Galt.

Mrs McLeod: I just have a comment that it seemed to me, with the effort you had to go through just to find out that the ECC existed, they might be spending more on

payout than on administration if more people knew that they had that resource.

You also mentioned in the letter from Bob Speller, at least the mention was made that there'd been a joint meeting of MNR and MOE dealing with the whole situation of wells. It may not be relevant to the bill, but it would be very interesting to know what that information was.

Mrs Field: I think, Mrs McLeod, that anything to do with water is relevant to this bill. The bill is around the protection of resources. I think it's one of those things that tends to get shuffled down the line, and it's such a high priority. Try going without it for a couple of days and you'll recognize the need.

Mrs McLeod: Would you make that information available? The letter from Bob Speller is there, but the background information from Herb Grey was not and I'd appreciate seeing it.

Mrs Field: Yes. Great. Thank you.

The Chair: Excellent. With that, we actually got the 20 minutes in. Thank you very much, Mrs Field, Mr Field, for taking the time to drive in and make your presentation. We appreciate it very much.

The committee stands adjourned until Monday at 3:30.

The committee adjourned at 1757.

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Substitutions present / Membres remplaçants présents:

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Mr John Hastings (Etobicoke-Rexdale PC) for Mr Maves

Mrs Lyn McLeod (Fort William L) for Mr Duncan

Clerk / Greffier: Mr Todd Decker

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Official Report of Debates (Hansard)

Monday 28 October 1996

Journal des débats (Hansard)

Lundi 28 octobre 1996

**Standing committee on
resources development**

**Comité permanent du
développement des ressources**

**Environmental Approvals
Improvement Act, 1996**

**Loi de 1996 sur l'amélioration
du processus d'autorisation
environnementale**



Chair: Steve Gilchrist
Clerk: Todd Decker

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENT

Monday 28 October 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Lundi 28 octobre 1996

*The committee met at 1540 in committee room 1.*ENVIRONMENTAL APPROVALS
IMPROVEMENT ACT, 1996LOI DE 1996 SUR L'AMÉLIORATION
DU PROCESSUS D'AUTORISATION
ENVIRONNEMENTALE

Consideration of Bill 57, An Act to improve the Efficiency of the Environmental Approvals Process and Certain Other Matters / Projet de loi 57, Loi visant à améliorer l'efficacité du processus d'autorisation environnementale et concernant certaines autres questions.

The Chair (Mr Steve Gilchrist): Good afternoon. If I can call the committee to order on this our first day of clause-by-clause deliberation on Bill 57, the process will be slightly different today. We've had a request from the opposition parties that we allow them until Wednesday, which you'll recall the subcommittee had agreed would be the second day of clause-by-clause deliberation, to introduce their amendments. Apparently they aren't ready yet, and that's fine. The government has introduced three amendments. What we had done was request to know at least which sections their amendments would be dealing with on Wednesday, and we will therefore digest whichever sections are not being amended.

Ms Marilyn Churley (Riverdale): To clarify the record a little, our amendments are both in, the Liberals' and the NDP's, but legislative counsel, for a variety of reasons, weren't able to quite draft them yet.

The Chair: Forgive me.

Ms Churley: I'm pleased to tell you the sections. I assume that what we're going to do is go through the government ones today and then stand down voting on the sections until Wednesday.

The Chair: That is correct.

Ms Churley: My amendments are to sections 2, 3, 4, 6, 7, 9 and 10.

Mr Doug Galt (Northumberland): Could I have that repeated?

Ms Churley: Do you need the sections as well right now?

Mr Galt: Yes.

Ms Churley: Section 2, section 175.1; subsection 3(1); subsection 3(12); section 4; subsection 6(3); section 7; section 9; subsections 10(1) and 10(2).

Mrs Lyn McLeod (Leader of the Opposition): Our amendments are in for legislative drafting. I don't have a list of the sections that are affected, but it was my understanding that there would be no votes on clause-by-clause today, that we would consider the government amendments but that the actual clause-by-clause voting

would take place when the opposition amendments were before the committee.

The Chair: We had asked, and the report back I had was that the three parties had agreed that if there was a section that was not being amended, there was no reason to wait till Wednesday, that we could debate and vote on that section today.

Mrs McLeod: That wasn't my understanding. I'll endeavour to get a list of the sections that we would be amending fairly shortly.

The Chair: Thank you. Meanwhile, we can proceed with the government amendments. As Ms Churley mentioned, what we will do is debate and vote on the amendments, but we will stand down the relevant sections.

Dr Galt, since this time I don't have to ask who has the first one.

Ms Churley: I'm sorry. I'm not trying to complicate things here, and maybe this is not a problem, but we're not dealing with all of the amendments within one section, and sometimes one amendment will have an impact on a government amendment. That can be a problem for our amendments when they come up on Wednesday if we vote on a government amendment today that will essentially cancel out one of our amendments.

The Chair: Only if they were identical.

Mrs McLeod: Our understanding coming in today was very clearly that, because it was legislative counsel that was not able to do the drafting, there would not be votes taken on amendments, for exactly the reason that Ms Churley has said. If there are conflicting amendments, there has to be some consideration of all the amendments before the final decision can be made.

The Chair: Again, amendments are handled in sequential order. We don't stand down amendments normally. We vote on each amendment. If there is a conflict created, then that has to be taken into account when you get to the subsequent section anyway. This is not unusual or in any way out of order.

Mrs McLeod: But the discussion would normally take place with all the relevant amendments before you.

The Chair: They may be before us, Mrs McLeod, but we only debate one amendment at a time. I would accept that you would have had the opportunity to read all the amendments, but normally if an amendment to subsection 1(1) has an impact on subsection 1(2), that gets dealt with when we get to subsection 1(2).

Mrs McLeod: Right, but if there are three amendments on subsection 1(1) with some differences, subtle or otherwise, then it's very difficult to conduct a vote on any one of those amendments.

The Chair: The precedent in this committee, and I certainly will defer to the clerk or legislative counsel if we have erred in the past, is that there has been a sequence followed based on when they were introduced, and if there is enough overlap, the second one that's deemed to be too close to the first one already debated is determined to be out of order. Unless there is a significant difference in the other party's amendment, there would be no second or third debate if amendments were that similar. I'm having a hard time understanding why we would not continue to follow the practice of dealing with each amendment on its own.

Mrs McLeod: I'm having an equally difficult time knowing how we can do clause-by-clause when we're missing two sets of amendments to the bill.

The Chair: I don't want this to sound like it's the purview of the Chair, but that was my understanding. I was there when representations were made to the representative from the third party. I know what was said and I know what the acknowledgement was. If that message has not made it back, then that's indeed unfortunate, but I was equally clear that we would hold votes on all sections which were not going to be amended and we would hold votes on whatever amendments did come forward because there was a chance that legislative counsel would have some, if not all, of the opposition ones ready today. Given that this was a three-party agreement to proceed with clause-by-clause and given that things do not have to be in anything more than handwritten form, I was prepared to make that indulgence if all three parties came to an agreement, and I certainly thought we had one.

Dr Galt, you've been gesticulating frantically.

Mr Galt: Can I get a word in edgewise?

The Chair: Absolutely.

Mr Galt: We have three amendments. Last week, when we were discussing them, I had no idea at that point in time how many we might have. If the opposition party and the third party are willing, I think personally that we should adjourn and come back on Wednesday. We have two and a half hours. I don't see any reason why we can't get through it in two and a half hours if they're agreeable that we'll complete it that day. We have three very simple amendments here. I would suggest that

we do them on Wednesday, and then it will get rid of this sequential problem.

The Chair: Dr Galt has moved adjournment.

Mr Galt: I want some discussion. Is everybody comfortable?

Ms Churley: Yes, I certainly would be. I want to support the Chair in that I agreed to go ahead with the Tory amendments today, but I wasn't quite clear, I have to admit, on how we were dealing with the actual voting. To be fair to the Chair, he tried to accommodate this problem, but I see that there is a problem. We all like to see the material before us, because sometimes the government, especially when it has a simple amendment, may find that an NDP amendment might improve its amendment and it may withdraw its and replace it with a New Democratic amendment. That is what I think Mrs McLeod is getting at. Sometimes an amendment can affect how people vote on a government amendment. Therefore, I would agree that we adjourn for today and that we deal with all the amendments on Wednesday. I am committed to completing them on Wednesday.

Mr Galt: Mr Chair, in view of this, I wonder if we could have the opposition and third party amendments by Wednesday morning at the latest.

Mrs McLeod: Our amendments are in, but they haven't been drafted. As a substitute on the committee for our critic, Mr Chairman, it was my understanding that we submitted our amendments late last week, but there was a problem in terms of backlog for legislative counsel in drafting them in a form such that they could actually be tabled with the committee. Our homework has been done, our intent is known, but they just, for reasons beyond our control, couldn't be tabled today.

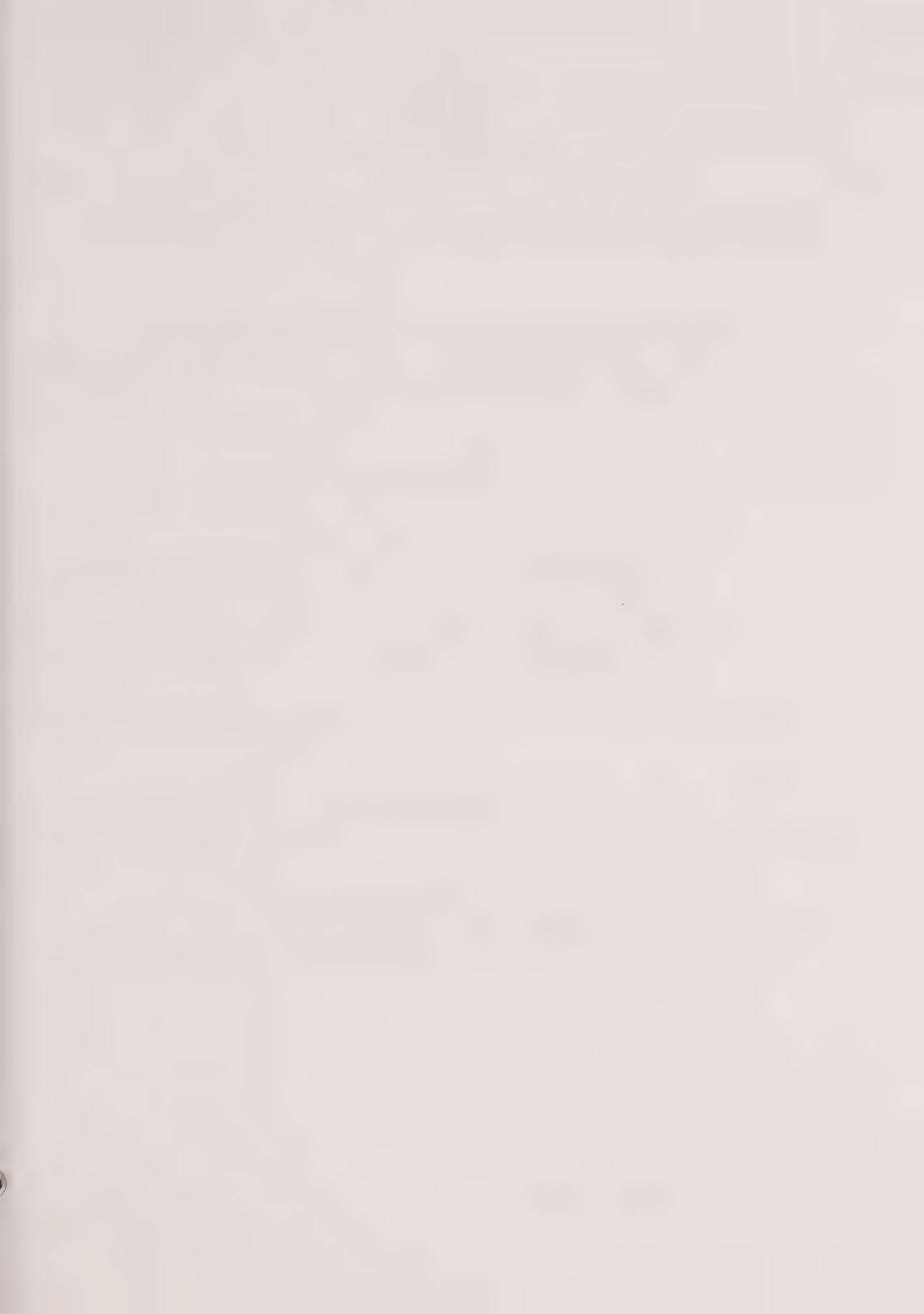
Mr Galt: You don't anticipate a problem getting through it Wednesday afternoon? We'll get through it?

Mrs McLeod: I trust not, unless the government sees fit to significantly revise the bill, which I would optimistically look forward to.

Mr Galt: With that support from the two other parties, Mr Chair, I would move that we adjourn until Wednesday at 3:30.

The Chair: Further discussion? All in favour? The committee stands adjourned until Wednesday at 3:30.

The committee adjourned at 1548.



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*Mr Bart Maves (Niagara Falls PC)

Mr Bill Murdoch (Grey-Owen Sound PC)

Mr Jerry J. Ouellette (Oshawa PC)

Mr Joseph N. Tascona (Simcoe Centre PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mr Doug Galt (Northumberland PC) for Mr Baird

Mrs Lyn McLeod (Fort William L) for Mr Duncan

Clerk / Greffier: Mr Todd Decker

Staff / Personnel: Mr Doug Beecroft, legislative counsel

Mr Ted Glenn, research officer, Legislative Research Service

Mr Bob Shaw, assistant director, central region,

Ministry of Environment and Energy

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Mercredi 30 octobre 1996

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Consideration of Bill 57, An Act to improve the Efficiency of the Environmental Approvals Process and Certain Other Matters / Projet de loi 57, Loi visant à améliorer l'efficacité du processus d'autorisation environnementale et concernant certaines autres questions.

The Chair (Mr Steve Gilchrist): Good afternoon. If I can call the committee to order on what was to have been our second day of clause-by-clause consideration of Bill 57. Moving right into clause-by-clause consideration, are there any amendments to section 1?

Mr Doug Galt (Northumberland): I move that the bill be amended by adding the following section:

"0.1(1) Clause (g) of the definition of 'sewage system' in section 74 of the Environmental Protection Act is repealed and the following substituted:

"(g) a drainage works under the Drainage Act or a sewage works where the main purpose of the works is to drain land for the purpose of agricultural activity.

"(2) Clause (h) of the definition of 'sewage system' in section 74 of the act is amended by striking out 'the Drainage Act.'"

This motion amends the definition of "sewage works" and "drainage works" in section 74 of the Environmental Protection Act to mirror the definition of the Ontario Water Resources Act. Subsection 53(6) is amended by subsections 5(1) and (2) of Bill 57, the provision in the Environmental Protection Act, to be the same as those in the Ontario Water Resources Act which are being amended by Bill 57 and thus should also have been amended. However, due to an oversight during the drafting of Bill 57, amendments to section 74 of the Environmental Protection Act were not included.

The Chair: Any further comment? Seeing none, I'll put the question. All those in favour of the section carrying? Contrary? The section is carried.

Are there any further amendments to section 1? Seeing none, I'll put the question. All those in favour that section 1 carry? Contrary? Section 1 is carried.

Section 2, any amendments or comments? I believe we have two identical motions. Ms Churley, you had the attention of the Chair first.

Ms Marilyn Churley (Riverdale): We've just agreed that I would introduce this motion. I'll read it.

I move that clauses 175.1(a) and (b) of the Environmental Protection Act, as set out in section 2 of the bill, be struck out.

This is an issue we've discussed here before. Both the Canadian Environmental Law Association and Canadian Institute for Environmental Law and Policy brought up the issue that it permits the Lieutenant Governor in Council to exempt any person, any thing, and we find that very problematic. For that reason, given that the scope is so wide and it's giving that kind of authority to the Lieutenant Governor, we think that is not a good way to protect the environment. It's not evenhanded and transparent for all. Therefore I move this, I'm sure, with the support of my Liberal colleague.

It really is problematic in that it limits the rights of Ontarians to protect their environment and know they can trust their government to be going by the same rules. I hope the members here will support this amendment.

Mr Galt: Really the two clauses that are being referred to here are what this bill is all about, and by striking them out we don't have a bill. This is the purpose of the bill. I should point out the provisions already exist as set out in these two clauses in the Environmental Protection Act.

This allows for conditions to be applied to exemptions, which can't be done now. The only thing we can do now is exempt outright, and by putting this in the bill we'll be able to add the conditions. If we went ahead with striking this out we'd no longer be able to regulate things like recycling or prohibit discharges. It's just not acceptable to have this struck from the bill.

Ms Churley: As a lawyer from CIELAP points out, and I think this is very important: "...particularly troubling in the light of the lack of clarity regarding how the authority which is sought through these proposed amendments to the EPA and OWRA is to be used. It must be assumed" — because that's not clear at all — "that the government intends to use this authority to implement the proposals made in the July 1996 document entitled Responsive Environmental Protection. This" could "include the establishment of 'standardized' (permit by rule) systems for some types of approvals, and complete exemptions for others. However, many of the proposals contained in the Responsive Environmental Protection document were so vague and imprecise that it was impossible to comment on them meaningfully."

I would like to ask Dr Galt if he would give me his comment and the concerns that have been expressed around the fact that it's not clear.

Mr Galt: I point out that the paper that was released in July is a consultation paper. It's not a position taken by the government. They are ideas and thoughts that have

been brought to our attention by various stakeholders. We're putting them out for further discussion and gave 75 days for response to that particular paper that was put out.

I point out that what was going on here was actually more restrictive than in this legislation. We'll be able to scope through regulation by putting conditions on when exemptions are made. Right now the legislation allows exemptions, and when an exemption is made it's just wide open and total. What we're proposing here is that conditions will be applied when those regulations are written and therefore will be scoped down and narrower.

Ms Churley: I don't agree with that, but in the interests of time, because I did say we'd finish today, I'll let it go. But I want to be on the record very strongly opposing that explanation. I don't think it's going to work that way and I think this sets a very dangerous precedent.

The Chair: Any further comment? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? The motion is defeated. For the record I indicate that there was an identical motion from the official opposition.

Any further amendments to section 2 of the bill?

Mr Galt: I move that clauses 175.1(c), (d) and (e) of the Environmental Protection Act, as set out in section 2 of the bill, be struck out and the following substituted:

"(c) governing and requiring the payment of fees to the crown or to any other person or body specified by the regulations, including prescribing the amounts or the method of calculating the amounts of the fees, and governing the procedure for the payment,

"(i) in respect of a certificate of approval, provisional certificate of approval, permit, licence or renewal of licence, examination, inspection or certification,

"(ii) in respect of any registration or record required by this act or the regulations,

"(iii) in respect of an activity pursuant to a provision of a regulation that exempts a person from the requirement to obtain a certificate of approval, provisional certificate of approval or permit, or

"(iv) in respect of the supply of information, services, or copies of documents, maps, plans, recordings or drawings;

"(d) providing for the retention by a person or body specified by the regulations of all or part of the fees paid, under this act, to the person or body;

"(e) providing for refunds of fees paid under this act to the crown or to a person or body specified by the regulations;"

I have a few comments. This motion broadens the range of entities who, acting on behalf of the crown — that is, designated by regulation — may collect, retain or refund fees. This motion also adds inspections to the list of items for which fees may be established by regulation. The omission of inspections from Bill 57 was due to an oversight.

The extent of the rewording required to accommodate these changes makes it more practical to strike out the existing wording and substitute new ones. I believe we have a sheet we can pass around showing what has been struck out and what is new, if that would be of some assistance.

Mrs Lyn McLeod (Leader of the Opposition): I'd like to ask from some clarification of where this came from. What made the government decide to bring forward this particular amendment? What representation to the committee would have led to the proposed amendment? As I understand it, this would allow the minister to rebate or not collect fees from certain individuals, but there doesn't seem to be any indication of why, under what circumstances, who'd pay and who wouldn't pay.

Mr Galt: Some of it was simple oversight, such as leaving out the word "inspections." We wanted to have that added and broaden the thinking in terms of collection of fees.

Mrs McLeod: I'm particularly interested in clause (d) and would like some clarity on who will pay and who will not pay fees under this section. Is there anything at all to limit or define the determination of who pays the fees?

Mr Galt: I'm sorting out what was an oversight to begin with. It's designating people to collect fees, able to designate what amount they are able to retain. If a third party is collecting fees on behalf of the government, there will be the ability to leave some of that fee with them.

Mrs McLeod: I'm sorry, but the wording in the original bill provided for that, so the amendment presumably, as I read it, is to broaden the powers given under the bill to allow a person or body to retain fees. There was the power providing for refunds of fees to the crown or municipality or person acting on behalf of.

Mr Galt: I'll call on counsel to see if he can explain the technicality for you.

1550

The Chair: Perhaps he could introduce himself for the benefit of Hansard, prefacing his comments.

Mr Bob Shaw: My name is Bob Shaw. I'm assistant director of central region. The wording change that has been made in (d) by the addition of "by a person or body specified by the regulations of" and then it goes on to read, "all or part of the fees paid, under this act," and then the insertion again, "to the person or body" is to reflect the changes that were made in 175.1(c). It used to read, "requiring the payment of fees to the crown, a municipality or person acting on behalf of the crown." When that was broadened so that it now reads, "fees...to the crown or to" any other "person or body specified by the regulations," a comparable change was required in (d) to mirror the wording.

Mrs McLeod: So basically throughout the entire piece, whatever cabinet decides goes with no clarification up front in the act; there's no limitation, no restriction in terms of decisions that are made about who pays and who can be exempted.

Mr Shaw: No, this does not pertain to who pays and who is exempted. This pertains to the fact that if the government chose to set a regulation in place that said a fee must be paid for this service — such as, if I can use an example, our paying a fee for the licences for our car — and the choice was made that rather than have government employees collect all that money, the private sector was going to collect the money, then (d) makes provisions that whatever third party the government has said is empowered by regulation to collect the money; (d)

allows by regulation again for that party to retain part of the money that is collected.

Mrs McLeod: Mr Chair, we have an amendment that we will place and support that proposes that the fees go into a consolidated revenue fund, and from that fund they can be directed for environmental purposes. That would be our preference. We think it's a limitation, a clear direction for any fees, so we will not be supporting the government's amendment, nor would we be supporting that section of the bill.

The Chair: Thank you, Mr Shaw. Any further comment? Seeing none, I'll put the question. All those in favour of the motion? Contrary? The motion is carried.

Further amendments to section 2?

Mrs McLeod: I move that section 175.1 of the Environmental Protection Act, as set out in section 2 of the bill, be amended by adding the following subsection: "Limitation

"(2) A regulation made under clause (1)(c) shall not authorize the charging of fees for any service or for the supply of any documents or material for which a fee is provided under the Freedom of Information and Protection of Privacy Act."

We place this amendment because we believe it should be absolutely clear that there should not be fees chargeable under this act that would exceed those that are already in place under other acts.

The Chair: Any comment? Seeing none, I'll put the question. All those in favour of the motion? Contrary? The motion is defeated.

Further amendments to section 2?

Mrs McLeod: I move that the bill be amended by adding the following section:

"2.1 The act is amended by adding the following section:

"Separate account" —

The Chair: Excuse me. There are others that come before that. There's another one from you and one from the NDP, both referring to section 2.

Mrs McLeod: Which would you like me to place first?

The Chair: The one that amends (f.1) would appear to be next in order.

Mrs McLeod: That's fine. It's not as relevant to the immediate discussion, but I'm happy to do it in whatever order you would like, Mr Chair.

The Chair: Okay. We've done it in strict sequence in the past, but I will take direction from the committee.

Mrs McLeod: I didn't determine the sequence. Did you want to do the NDP motion first or should I place this motion?

The Chair: If you wish to proceed and place (f.1).

Mrs McLeod: I move that section 175.1 of the Environmental Protection Act, as set out in section 2 of the bill, be amended by adding the following clause:

"(f.1) requiring applicants for approvals, permits or licences to maintain liability insurance for environmentally sensitive work, defining 'environmentally sensitive work' for the purpose of this clause and prescribing different amounts of insurance for different classes of applicant and different types of work."

This is our response to what we anticipated to be the elimination of the environmental compensation fund,

which I understand has just been passed. We believe there needs to be some recourse for individuals who are facing environmental damage. It should not deplete their own funds. I think the presentation that was made by Jim and Mary Field of Port Dover was a very compelling one, and there are other incidents where people have been dependent on the environmental compensation fund to ensure that they were not, through no fault of their own, financially penalized. We believe that at the very minimum there should be a requirement that there be liability insurance by companies undertaking work that could be environmentally damaging.

The Chair: Further comment? Seeing none, I'll put the question. All those in favour of the motion? Contrary? That motion is defeated.

Further amendments to section 2?

Ms Churley: I move that section 175.1 of the Environmental Protection Act, as set out in section 2 of the bill, be amended by adding the following subsection:

"Limitation

"(2) A regulation made under clause (1)(c) shall not authorize the charging of fees except from holders of or applicants for a certificate of approval or a provisional certificate of approval."

The reason I've made this amendment is that there are concerns about provisions in the bill that would allow the ministry and municipalities or persons acting on behalf of the ministry who supply almost anything — "information, services, or copies of documents, maps, plans, recordings or drawings" — to charge fees for the delivery of these services or materials. The concern here is that members of the public who want to get involved and try to protect the environment, whether in their own backyards or overall, could be charged to have access, and lots of these things are provided under the Freedom of Information and Protection of Privacy Act already, which is also a problem. The public should not be constrained in this way in terms of trying to participate in protecting the environment and being a part of environmental decision-making and of course holding the government accountable for its actions.

It's absolutely imperative in this bill that the government make it very clear to the public at large that the MOEE is limited to charging in situations where professional service or advice is provided by MOEE staff to people holding or applying for certificates of approval. That would make it very clear to the public that they won't be shut out of the process if they can't afford to pay the fees.

The Chair: Further comment? Seeing none, I'll put the question. All those in favour of the motion? Contrary? That motion is defeated.

Is it the favour of the committee that section 2, as amended, carry? All those in favour? Contrary? Section 2, as amended, is carried.

Further amendments — I will ask for them since I see them in front of me — to section 2.1?

1600

Mrs McLeod: I move that the bill be amended by adding the following section:

"2.1 The act is amended by adding the following section:

"Separate account

"123.1(1) All money received by the crown under this act from fines, penalties, fees and levies shall be held in a separate account in the consolidated revenue fund.

"Payment

"(2) The minister may direct that any money in the account be paid to the minister or to a person specified by the minister for such environmental protection purposes as the minister shall specify."

We think that there is ample precedent for governments designating fees that are collected for specific purposes. We believe that with the breadth of fees the government is now proposing to levy under this act it would be entirely appropriate to ensure that those fees are designated for environmental protection purposes.

Ms Churley: I can support this amendment, although I have an amendment on the same section that is more comprehensive. I'm not sure they contradict each other; I don't necessarily think they do.

The Chair: We'll get to yours. Unfortunately I'm going to have to rule that the amendment is out of order for the simple reason that the assessment of fees and the direction of fees is a motion that can only be made by a minister of the crown.

Ms Churley: So you're not going to allow me to read mine?

The Chair: No, the one that's on the floor right now.

Ms Churley: Oh, I see. Sorry.

The Chair: It speaks to the direction of funds, the allocation of funds, and that can only be done by a minister. Not even the parliamentary assistant could make a motion to that effect.

Mrs McLeod: May I ask, if it's in order, that at the conclusion of the afternoon the committee make a recommendation to cabinet that the moneys collected under this act be directed into a special fund?

The Chair: We certainly have a precedent. At the end of Bill 49 we had an agreement that we would stay long enough to have a discussion about that. The conclusion was the successful carriage of a recommendation not unlike the nature of the one you're introducing here today.

Mrs McLeod: Would it be in order to place it orally at the end of the session?

The Chair: Absolutely.

Mrs McLeod: Thank you.

The Chair: Moving on, are there any further amendments? Ms Churley.

Ms Churley: I move the bill be amended by adding the following section:

"2.1 The act is amended by adding the following section:

"Separate account

"175.2 (1) All money received by the crown under this act shall be held in a separate account in the consolidated revenue fund, including all fines, penalties, fees and levies paid under the act and regulations.

"Special purpose

"(2) Money standing to the credit of the separate account is, for the purposes of the Financial Administration Act, money paid to Ontario for a special purpose.

"Minister's direction

"(3) The minister may direct that money be paid out of the account to the minister, or to any person specified by

the minister, for environmental protection purposes such as responding to spills or other environmental emergencies, restoring or rehabilitating the natural environment where it has been adversely affected by the discharge of a contaminant or pollutant, decommissioning contaminated lands that have been abandoned by the persons responsible for the contamination, funding programs that encourage or facilitate pollution prevention or waste reduction, reuse or recycling, or providing participant funding or intervenor funding to facilitate public participation in environmental decision-making under the act.

"Report

"(4) The minister shall submit the annual financial report to the Lieutenant Governor in Council and shall table the report in the Legislative Assembly by April 1 of each year."

The Chair: Thank you, Ms Churley. Having given you the opportunity to read it into the record, I must make the same ruling, because it provides for the direction of funds, that such an amendment is out of order unless it's introduced by a minister.

Ms Churley: I'll have to take your word for that.

The Chair: Feel free to ask legal counsel.

Ms Churley: No, in the interests of time. I'm sure they'll win. They know more about it than I do. Given that this is ruled out of order, am I permitted to ask a question around this particular item?

The Chair: If the committee has no opposition to your doing that.

Mrs Barbara Fisher (Bruce): I wonder if it would be appropriate, since it addresses the same question we just talked about and we know we're going to be discussing it at the end, to do it at that time because then we'll be —

Ms Churley: Sorry?

The Chair: Mrs McLeod already had requested an opportunity to fashion a recommendation on this subject after the conclusion of the actual debate.

Ms Churley: Oh, I'm sorry. I was reading. Thank you. I didn't hear her say that.

The Chair: Thank you, Ms Churley. We're moving on to section 3. Are there any amendments or comments relating to section 3 of the bill? Two hands went up simultaneously. Ms Churley.

Ms Churley: It looks like the NDP and the Liberals have the same amendment here.

I move that clause 176.(1)(h.2) of the Environmental Protection Act, as set out in subsection 3(1) of the bill, be struck out.

This is the section dealing with deeming. It refers to deeming a certificate of approval to exist in respect of the plant etc. Several people who spoke before the committee questioned them on the meaning of the deeming power in conjunction. I believe some industry representatives brought up that as a concern as well.

Again I refer to the document from the Canadian Institute for Environmental Law and Policy. I don't know if people have it in front of them. On page 5 of that article they bring up some of the problems:

"Furthermore, serious problems have been identified with the legal and policy implications of 'deeming' certificates of approval to exist under 'permit by rule' systems." They point out, and I think this is a very

important point, "that the granting of a certificate of approval provides 'statutory authorization' to the proponent. This provides an effective bar against common law actions directed at the proponent by occupiers and owners of neighbouring or downstream lands which may be harmed by the proponent's operations covered by the authorization. These common law rights of the owners and occupiers of lands potentially affected by industrial and other activities should not be removed unless there is adequate provincial oversight of the approval and operation of facilities to ensure that they do not cause damage to the environment, property or human life."

It raises questions about the potential for unfair decision-making and that's why (1) I don't think it's necessary in the context of what the government is trying to achieve in here, and (2) I think it is extremely arbitrary and gives unfair application to the law. In terms of the public being able to protect their environment, their land, I believe it should be struck out of the bill.

Mrs McLeod: I add to that, in the hearings I sat in, and I read the Hansard from the hearings that I did not attend, I didn't hear one representative to this committee who understood what the deeming provision was there for, how it might be used, why it was necessary, and I certainly didn't hear anybody support it. It seems to me this act provides such broad powers to the minister that this additional power of deeming, which further confuses the issue, is really inexplicable.

I would appreciate it, even before the amendment is placed, if some member from the government would speak to why deeming is here. It was a question repeatedly raised by presenters to the committee and never answered.

Mr Galt: I point out that this is certainly not new in the act. It already exists in part V of the Environmental Protection Act. We're standardizing its use as it was brought in by the previous government. I can quote you where it was brought in at 176(4)(s), "deeming a certificate of approval to exist in respect of a waste management system or waste disposal site other than a site in respect of which subsection 30(1) applies." That was brought with Bill 143, the Waste Management Act, by the NDP government in 1992.

It's also required for certificates of prohibition. In this case it would only be used for standardized approvals regulations. It's not all that new. It's been used and it's working.

1610

Mrs McLeod: My question is, why would you need this when you've already got these incredibly broad powers of exemption?

Mr Galt: That's part of the problem. They're too broad and too open. Once they're exempted there's nothing there; there are no conditions. The reason for the bill is to be able to put conditions on exemptions. That's the whole thing this bill is about.

Ms Churley: The obvious question is, why make those exemptions? Make exemptions but put some rules around the exemptions. You have the ability to exempt any thing from both acts. Now I suppose you're digging the hole that could cause all kinds of problems and you're trying to put some protections around some of those exemptions. I assume you know there could be massive prob-

lems in allowing those kinds of blanket exemptions to be given to anything.

Mr Galt: It seems to be difficult to explain this exempting and the reason for it because it's already there. Yes, they can be exempted, you're absolutely right, but with those exemptions, as it's now laid out there's not the ability to scope or put conditions on those exemptions. That's the basis of this bill, to be able to put those conditions on the exemptions, which we're not in a position to do. I would think you'd be very supportive of writing more regulations as we move with standardized approval. That's really what this is about: getting rid of some of the bureaucratic difficulties of issuing certificates of approval and establishing very specific regulations that people can go ahead and do things with. Here we are exempting with certain conditions and that's how the regulations will be written.

Mrs McLeod: Our concern with the bill is that it doesn't really deal with a streamlining in terms of time lines of greater efficiencies. The essence of this bill is to give absolutely unlimited, broad, arbitrary powers to cabinet through regulation without due hearing, without due public consideration. This adds to those powers.

I suspect, Mr Galt, that when people who came forward supporting this bill in the belief that you were doing what they hoped you would do to streamline the process realize the arbitrary ability of the minister on the one hand to exempt them but on the other hand, without any real consultation, put limits on that exemption, they are going to have some real concerns about just how arbitrary this is.

Ms Churley: That was my point as well. I just wanted to ask a question of Dr Galt when he has a moment. I want staff to sit by me too and give me all the answers. Can I borrow one of your assistants?

I wanted to ask a question about the comments Ms McLeod made about public consultations around this. Will there be any? There's no provision in the bill to make sure there would be public notice, public consultation. Are you willing to provide the public with notice?

Mr Galt: Anything and everything the ministry will be doing is subject to the Environmental Bill of Rights registry. It will be published and there will be ample opportunity for public participation and consultation.

Ms Churley: Given the latest rather unprecedented and interesting report from the Environmental Commissioner to the Legislature, there is great concern about lots of environmental — I would use the word "deregulation"; she didn't — changes being made throughout the government in terms of environmental protection that are not showing up in the environmental registry. Over the length of time this government has been in power we have seen that implement for consultation and at least public notice weaken further and further, so I don't feel that's even a guarantee any more. That's one. The second one is that the environmental registry is there for anybody who can make their way to a computer and look it up, and I just don't believe that that's adequate. So I have those two concerns about that. I don't necessarily require an answer but that's my concern.

The Chair: Any further comments? Seeing none, I'll put the question. All those in favour of the motion?

Contrary? The motion is defeated. Again, just for the record, there was a duplicate motion introduced by the official opposition. Any further amendments to section 3 of the bill?

Ms Churley: I move that subsection 3(6) of the bill be struck out and the following substituted:

"(6) Clause 176(4)(g) of the act is repealed and the following substituted:

"(g) requiring the reduction, reuse or recycling of hazardous waste, or any class thereof."

I understand from our discussions about this earlier that the minister may already have ability to provide the 3Rs in hazardous waste, but I would like it to be clear in this bill. The reason I say this is that I would support getting rid of the Ontario Waste Management Corp. But under the existing bill all it's doing is getting rid of it. There's nothing in the bill that talks about what happens to all the hazardous waste programs. Our government, after the final EA hearings, said no to the hazardous waste facility that had been reviewed for quite a long time, and we're all aware that it took a very long time, a very complex subject, and we still don't have complete answers to how we deal with our hazardous waste.

We know that from the early days, when those hearings started, the big megaproject looked like a good idea. I think that pretty well everybody has changed their tune on that. As technology has advanced and there are new ways to deal with hazardous waste, there are more micro ways of dealing with it. We also know that prevention is very important. We don't have any programs in place now under your government, so I would like to see that this section be amended to make sure that we have provisions that the reduction, reuse or recycling of hazardous waste be clarified for people, that the government will be bringing in those programs.

Mr Galt: We already have the regulation-making authority that exists in 175.1(b). I can go through it and read it but I don't think it's really necessary. It's already in the bill.

The Chair: Any further comment? Seeing none, I'll put the question. All those in favour of the motion? Contrary? The motion is defeated. Further amendments to section 3?

Mr Jean-Marc Lalonde (Prescott and Russell): I move that subsection 3(12) of the bill be struck out.

When I look at the possibility that power will be given to municipalities relating to odours, noise and dust under the EPA, we have experienced in the past that municipalities, through municipal or political pressure, would turn around and approve those concerns to the people in the area surrounding especially farming communities. By going to this clause, it would give municipalities the power to give the authority. There is definitely a danger. I really believe that the environment people should be taking care of it, as they are at the present time, after consultation with the Minister of Agriculture.

1620

The Chair: Any further comments?

Ms Churley: I believe we have the same amendment.

The Chair: Yes, you do.

Ms Churley: I would just like to speak in support of the Liberal amendment for similar reasons.

The Chair: Any further comment? Seeing none, I'll put the question. All those in favour of the motion? Contrary? That motion is defeated.

I now put the question on section 3. Is it the favour of the committee that section 3 carries? All those in favour? Contrary? Section 3 is carried.

Any comments or amendments to section 4 of the bill?

Ms Churley: I move that subsection 177(6) of the Environmental Protection Act, as set out in section 4 of the bill, be amended by adding at the end "and such materials shall be posted in the registry under the Environmental Bill of Rights, 1993, and the text made available to the public free of charge."

I make that amendment so that at least there is some clear provision in the bill that the public be made aware of this particular section.

The Chair: Any further comments? Seeing none, I'll put the question. All those in favour of the motion? Contrary? That motion is defeated.

Further amendments to section 4?

Mrs McLeod: I move that section 177 of the Environmental Protection Act, as set out in section 4 of the bill, be amended by adding the following subsections:

"Public availability

"(7) Despite subsection (4), a code, formula, standard, protocol or procedure shall not be adopted by reference unless that which is proposed to be adopted, including a clear statement of how and where the text of what is to be adopted will be generally made available to the public and the cost to the public of access to the text, is published in the registry under the Environmental Bill of Rights, 1993.

"Same

"(8) Any code, formula, standard, protocol or procedure that is adopted by reference and that is not published in the Ontario Gazette shall be made available free of charge, during regular business hours, to the public."

The Chair: Would you like to speak to your motion?

Mrs McLeod: I think it follows the motion placed by Ms Churley that was just defeated, unfortunately. It's really in essence ensuring that there is due public notice. That was one of the concerns heard from presenters to the committee, that with the powers given to the cabinet under this, obviously there'd be many situations in which there would not be public hearings and due process followed because of the exemptions, and that there should at the very least be adequate public notice and access to information.

Mr Galt: Again, the Environmental Bill of Rights certainly sets out the legal requirements with regard to giving notice, and certainly we do if it falls within those requirements, and it certainly has been the practice of the ministry to advise those persons and stakeholders who are directly involved. Therefore, I cannot support this motion.

Mrs McLeod: It appears there are to be no limits of any kind, even in terms of access of the public to information about what the government has done. I find it increasingly frustrating that even the most basic proposals for public awareness of what the government is doing, as it takes these powers unto itself, are simply being ignored pro forma by the government members.

The Chair: Any further comment? Seeing none, I'll put the question. All those in favour of the motion? Contrary? That motion is defeated.

Further amendments to section 4? This time, in the case of a duplicate, Ms McLeod, perhaps you wish to go first.

Mrs McLeod: I move that section 177.1 of the Environmental Protection Act, as set out in section 4 of the bill, be struck out.

We place this amendment because we see no legitimacy in the crown being exempt from any liability and are particularly concerned about this being in a bill in which the minister is giving himself and the cabinet incredible powers to exempt, to place limitations on his exemptions. There is potential for harm in the proposals before us in this bill, and at the same time the minister is seeking to exonerate himself and the crown from any liability at all.

There is precedent in law that if a government makes a new regulation that harms someone, the public can take the government to court. I believe that precedent should stand and that it is unconscionable for a government, at the same time as it gives itself these kinds of broad exemption powers, to exempt itself from any liability.

Ms Churley: I will speak to this because the NDP has the same amendment. I couldn't agree with Ms McLeod more fully. This is really fundamental to people's civil rights, and it's just fundamental to fairness and government accountability that the public not have those civil rights taken away from them. The public should not end up having to foot the bill for government mistakes like this. We disagree all the time. I say you're deregulating; you say you're not. Time will tell, and I'm sorry to say, time will tell that I am right. Unfortunately, that's going to be a legacy of this government down the road, and that's a fact.

As you deregulate and take away people's ability to participate and be consulted and to protect their environment, the government pulls away from taking responsibility for its actions. It seems to me that the government must be aware that there are going to be problems, there are going to be liabilities as a result of this; otherwise it wouldn't be in there. I think this is absolutely shocking, beyond the pale, and I'm going to ask for a recorded vote on this. It is fundamental to people's rights, and I would urge all the members of the committee to at least support us on this motion. It's fundamental.

Mr Galt: I certainly have some empathy for the opposition and third party in their comments. As I read this, I struggle with legalese to interpret and appreciate what is there. But there's no question that courts and the law have been evolving and government has found itself in positions of liability that really hadn't been there before. Certainly a number of jurisdictions are adopting similar legislation to protect the government from that kind of excessive liability, such as BC and Alberta. It seemed logical to be putting it into the legislation in this particular bill.

Ms Churley: I don't know exactly what Alberta's doing, but they do have a special environmental fund, which in a way ties in with this. I don't know if you're aware, but when we — I'm sorry. Good thing there's no TV camera on me.

Mr Galt: But that black box is up there.

Ms Churley: I wouldn't be surprised.

The Chair: It is. I should have warned everyone on the committee. That's the black box on top of the TV.

Ms Churley: I think this ties a lot of pieces together. What the government is saying here is that they're trying to do what other jurisdictions are doing. At the same time, they're unwilling to even consider, as they increase their fees ability throughout the public and industry — there's going to be extra money made; we all know that, that this is a hidden tax, a user fee, whatever you call it — they refuse to do like Alberta did; that is, take that extra money and put it into a special fund for the environment. Here would be a good place to put some of that money.

And at the same time it is — which we'll be getting to later — taking away the environmental compensation fund, which is another attack on people's right to enjoy their own property, and if, through no fault of their own, they end up with an environmental hazardous situation on their property, there's some kind of compensation. That's going to be gone. It's really surprising for a government, especially under Bill 20, the new Land Use Planning and Protection Act, that puts such emphasis on individual rights and private property and all of that, to now say in this bill that it's taking away this last recourse.

1630

I think it really does have something to do with the budget cutting that's going on for the tax cut and to develop the budget, and the government doesn't want expensive court cases. If the government can stand behind the argument, which they keep trying to do, that this is not deregulating — "We're actually doing more with less," is what they say; "It's going to be better regulation" — then it should put its money where its mouth is and prove to the public — this is going to come back to haunt the government. It's incredibly fundamental.

Mrs McLeod: I could not disagree with Mr Galt more in terms of it being appropriate for this clause to be in this bill. This is the very bill that this clause should not be in, because of what else the bill does. I just simplify it in three ways.

This is the bill that takes out the Environmental Compensation Act, so if you are an individual who suffers environmental damage through no fault of your own, you have no recourse to compensation. You have to pay for the damage done to you out of your own pocket or you have to go to court and pay the court costs out of your own pocket. We've proposed an amendment today that would at least require companies to have liability insurance so that there could be a source of compensation through the private sector, which is what the government keeps harping on. That was defeated without any consideration of the proposal at all, so this bill is leaving individuals without any recourse to any financial support for dealing with environmental damage that has been caused through no fault of their own.

This same bill then goes and gives the minister and the crown powers to exempt from due process, from public hearings, environmental projects that are beyond anything any government has ever sought before, let alone anything any government has.

And then they give themselves the power to be exempt from any liability. If the government really believed this act was in the public interest, they wouldn't feel the need to exempt themselves from liability. They must feel there is potential harm to the public or they wouldn't have felt the need to include this clause in this bill.

The Chair: Further comment? Seeing none, I'll put the question. All those in favour of the motion?

Ms Churley: I asked for a recorded vote.

The Chair: Forgive me, Ms Churley. You did request that.

Ayes

Churley, Lalonde, McLeod.

Nays

Chudleigh, Fisher, Galt, Munro, Ouellette, Tascona.

The Chair: The motion is defeated. Again, for the record, there was a duplicate NDP motion similarly worded.

I'll put the question on section 4. Is it the favour of the committee that section 4 carries? All those in favour? Contrary? Section 4 is carried.

Are there any amendments or comments to section 5? Seeing none, I'll put the question. Is it the favour of the committee that section 5 carries? All those in favour? Contrary? Section 5 is carried.

Section 6 of the bill. Are there any amendments, comments?

Mrs McLeod: I move that subsection 6(3) of the bill be amended by striking out "Clauses 75(1)(s) and (t) of the act are" and substituting "Clause 75(1)(s) of the act is" and that clause 75(1)(t) of the Ontario Water Resources Act, as set out in subsection 6(3) of the bill, be struck out.

Basically, this is a revisiting of the deeming provision. The same debate that applied to the concern of ourselves and the New Democratic Party on the issue of deeming provisions applies to the changes made to the Water Resources Act.

Given the exemption powers that the minister is giving himself and the crown under this act, we do not see any relevance for there to be a further deeming, and the explanation that's been given to us on the Environmental Protection Act, that this allows the minister to place limitations on something which is already exempted, just adds to our concern about arbitrary powers being held by the crown.

Ms Churley: Again the NDP has the same amendment and for the same reasons. If I may, because it's an issue we covered earlier, I'd like to ask Dr Galt a question on that. There are many concerns about deeming and I raised some of them earlier, but there is a real concern about the number of staff layoffs in your ministry. I believe that many people are concerned about enforcement and compliance. How are you going to make sure, with I would say the purely inadequate staff you have, that you're going to be able to monitor carefully these proponents or industries that are so-called "deemed"?

Mr Galt: Mr Chair, the amendment, as proposed, is quite different from the question that's being asked by Ms Churley.

The Chair: It's certainly your right not to answer it, but it's quite appropriate for Ms Churley to pose the question to you.

Ms Churley: I am concerned about compliance monitoring. It's okay if you don't want to answer. I just think it's an issue that's been raised by some of the public. There are concerns about the implications of deemed approvals and the fact that when you have standardized approvals there could be more problems out there. I just think it's a legitimate question for the public to be asking.

Mr Galt: There's no question that the priority has been given to monitoring, ensuring that inspection compliance is there. I don't have the figure at my fingertips, but it's in the neighbourhood of 270 or thereabouts staff who are still employed in that area. That's literally no reduction and it's something like three to four times the number that Environment Canada has for all of Canada. We're looking after that area very well. I don't think Ms Churley needs to be all that concerned about how the monitoring is being carried out.

The Chair: Further comments? Seeing none, I'll put the question. All those in favour of the motion? Contrary? The motion is defeated.

Any further comments to section 6? Seeing none, I'll put the question if it is the pleasure of the committee that section 6 carries. All those in favour? Contrary? Section 6 is carried.

Section 7, any amendments or comments?

Ms Churley: I move that clauses 76(a) and (b) of the Ontario Water Resources Act, as set out in section 7 of the bill, be struck out.

This is the same subject as an earlier amendment under the other act. It deals with the same problem. It permits the Lieutenant Governor in Council to make regulations essentially prohibiting, regulating, controlling any thing or any matter or any pollutant, any discharge, any spill, and it goes on and on and on. The same concerns that I expressed earlier apply here to the Ontario Water Resources Act. I'm sure people appreciate that. That's the purpose of the amendment. I won't repeat what I said before. It's in the record. I have grave concerns about this open-ended provision.

The Chair: Any further comment? Seeing none, I'll put the question. All those in favour of the motion? Contrary? The motion is defeated.

For the record, there was a duplicate motion from the official opposition.

Further amendments to section 7?

1640

Mr Galt: I move that clauses 76(c), (d) and (e) of the Ontario Water Resources Act, as set out in section 7 of the bill, be struck out and the following substituted:

"(c) governing and requiring the payment of fees to the crown or to any other person or body specified by the regulations, including prescribing the amounts or the method of calculating the amounts of the fees, and governing the procedure for the payment,

"(i) in respect of an approval, permit or renewal of permit, licence or renewal of licence, examination, inspection or certification,

"(ii) in respect of any registration or record required by this act or the regulations,

"(iii) in respect of an activity pursuant to a provision of a regulation that exempts a person from the requirement to obtain an approval, permit or licence, or

"(iv) in respect of the supply of information, services, or copies of documents, maps, plans, recordings or drawings;

"(d) providing for the retention by a person or body specified by the regulations of all or part of the fees paid, under this act, to the person or body;

"(e) providing for refunds of fees paid under this act to the crown or to a person or body specified by the regulations."

This motion essentially reflects the one we made earlier under the Environmental Protection Act.

The Chair: Further comment? Seeing none, I'll put the question. All those in favour of the motion? Contrary? The motion carries.

Further amendments to section 7?

Mrs McLeod: I move that section 76 of the Ontario Water Resources Act, as set out in section 7 of the bill, be amended by adding the following subsection:

"Limitation

"(2) A regulation made under clause (1)(c) shall not authorize the charging of fees for any service or for the supply of any documents or material for which a fee is provided under the Freedom of Information and Protection of Privacy Act."

As on the Environmental Protection Act, we do not believe there should be a fee higher than what is already set out in the Freedom of Information and Protection of Privacy Act.

The Chair: Further comment?

Ms Churley: My amendment is a little different. I will be moving that. I haven't had a chance to really look at this. This doesn't in any way contradict the NDP one in front of us, does it?

Mrs McLeod: If yours were to pass it would make ours unnecessary. We're not optimistic that either of us is going to have any success, Marilyn.

Ms Churley: I think they're very similar.

The Chair: Further comment? Seeing none, all those in favour of the motion? Contrary? The motion is defeated.

Further amendments? Ms Churley. I guess it's academic.

Ms Churley: It's similar enough.

The Chair: Ms Churley, if you'd like to go first. Oh, excuse me one second.

Mrs McLeod: There is a Liberal motion that precedes it.

Ms Churley: Yes, I think there is.

The Chair: I beg your pardon.

Mrs McLeod: I move that section 76 of the Ontario Water Resources Act, as set out in section 7 of the bill, be amended by adding the following clause:

"(f.i) requiring applicants for approvals, permits or licences to maintain liability insurance for environmentally sensitive work, defining 'environmentally sensitive work' for the purpose of this clause and prescribing different amounts of insurance for different classes of applicant and different types of work."

I recognize the fact that this is a —

The Chair: Excuse me. You said "environmentally sensitive work."

Mrs McLeod: "Environmental sensitive work." It's been drafted by legal counsel. I won't get into a grammar lesson with legal counsel.

The Chair: I'm just saying it differed from the wording on the page.

Mrs McLeod: Yes, it did.

The Chair: You read "environmentally" instead of "environmental."

Mrs McLeod: Yes. I assume you would prefer that I placed it as it was drafted by legal counsel, which is fine. It's not grammatically correct. I'm an old English teacher.

The Chair: If you would prefer that we amend the written copy, I agree with you it's probably more appropriate. Fine, "environmentally" it is.

Mrs McLeod: I appreciate the fact that legislative counsel is extremely overloaded and has had difficulty in responding to all the requirements for drafting of amendments.

The Chair: It's all these duplicate amendments.

Mrs McLeod: It's a bill that needs a lot of work. Unfortunately there's not a lot of receptiveness to that.

I appreciate that this amendment parallels the amendment we made on the Environmental Protection Act, so I'm not optimistic that it will receive government support. But I want to highlight our very real concern with the elimination of the environmental compensation fund and that there is no recourse for individuals. This is damage experienced by individuals that is totally beyond their control.

I don't think it should be a principle of any government that there are costs imposed on individuals. This legislation opens up the potential for a government to make laws and regulations that have a direct impact on individuals and then gives the individuals no recourse for financial support at all. If the government is determined, as it appears to be, to eliminate the environmental compensation fund, we feel very strongly that there must be an alternative put in place.

The best we could suggest is that at least private companies be required to have liability insurance. If it is deemed to be inappropriate to include it in the act at this time, I request strongly that the committee bring this to the attention of cabinet for future action.

The Chair: Thank you, Mrs McLeod. Ms Churley.

Ms Churley: The NDP has a similar amendment to section 10, and it's the same issue. We heard from the farmers who came before us and told about the terrible situation they are in, and there are several other cases across the province. I strongly advise the government to support this one.

I also ask for a recorded vote on this amendment. I will be supporting it. I ask Dr Galt if he is going to support this amendment, if not, why not, and what his answer is for people who are in the same situation as the Fields.

Mr Galt: I would point out to Ms Churley that there are already provisions in the act to provide insurance or assurance, however you want to look at it, to environmentally sensitive areas; for example, certificates of approval given for the handling of pesticides, pesticide

licences. The things we're going to be doing with the standardized approvals would not be considered as environmentally sensitive. Consequently, for those two reasons I will not support this amendment.

Ms Churley: I would say that Dr Galt's clarification indicates to me again the total lack of understanding about environmental protection. How can he say, "Don't worry, what we're doing here is not going to be environmentally sensitive"? How can he know that? Sometimes the most innocuous-looking project can blow up and you can have an environmental disaster on your hands. I think it's the height of arrogance to say: "We know everything. Don't worry. Trust us. None of this is environmentally sensitive, so it can't happen." We've heard that many times before. We've had communities all over the province with environmental disasters and problems, and taxpayers often end up having to pick up the tab; people like the Fields end up having to pick up the tab and cover it themselves, which just is not fair. I can't understand why you wouldn't support this, Dr Galt.

Mr Galt: We're talking about issues such as have been mentioned before. We do not feel that the installation of something like a restaurant fan is an environmentally sensitive activity. Maybe Ms Churley feels that kind of thing is. I feel it's an awful lot of bureaucracy, and by setting the proper regulation, restaurant fans — if you look at the legislation and read it in great detail you'd be into having to give certificates of approval for bathroom fans, fans in livestock barns, and I don't think that's practical. This is why we're bringing in standardized approvals.

She made reference to Jim and Mary Field, and since the hearings last week — a week ago now, as a matter of fact — the next day I had an extensive half-hour discussion on the phone with them. I have followed up. When you examine the problem there, it does not come under this ministry; it comes under the Ministry of Natural Resources and the drilling for gas and oil, and proper insurance should be in that particular ministry. I really don't know the legislation in that ministry to quote if it is or isn't, whether or not these people were breaking the law, but I've certainly enquired and have passed the message on to that ministry.

Ms Churley: The whole question is a really interesting one. I don't know if anybody on the committee heard on CBC Metro Morning some discussion about the plant in the east end that recently had a fire. Of course this is not new to any government, the so-called orphan sites, and I've had it with Canada Metal.

Am I confusing issues here? I think they are all connected because it comes down to us as society and governments having to figure out how to protect the taxpayers and how to protect local land owners when you have these kinds of situations where you have environmental catastrophes and when you have abandoned sites and that kind of thing happens. The discussion this morning was around who should be responsible: federal government, provincial government? I know I'm talking about orphan sites more, but I think these are connected in that we have to start finding ways to ensure the taxpayers don't end up completely — it looks like more than likely this site in the east end of Toronto, the

taxpayers are going to end up having to pick up the tab on it.

1650

Mr Galt: I would just like to bring us up to date, because I did not understand from the Fields, and it might be of general interest to the committee, what had actually happened there, if I could just have 30 or 45 seconds to explain. What happened was they came in and drilled and they went down roughly 900 feet through a salt layer and then they apparently pulled the casing out. This allowed water to mix and it came up to the 135-foot level where the deep well was for their livestock. They were watering their livestock from this 135-foot level which became mixed with the salt. They were about a mile away. The water for their home came from a dug well and consequently they were unaware of this increased salt level. Pigs are extremely sensitive and I'm surprised they would have survived as long as they did under these conditions.

The well driller did not seal the well properly, or actually took the casing out, as I understand, which really allowed all this mixing to occur. Had the well driller — gas well, that is — properly sealed that well, none of this would have happened, and had there been any kind of bonding. The end result was that these people ended up suing an elderly lady who owned the land and it was a very messy affair. Until I chatted with them on the phone, I was unclear on what the real problem was.

I don't think we need to go into any discussions on the recent fire, but I just thought that for general information people might appreciate being clarified a little bit on that particular instance.

Mrs McLeod: Thank you. I appreciate the clarification because I think it underscores the problems that the Fields were facing and that they were problems not within their own control. I remember a part of their presentation saying they had no idea what to do until somebody told them about the environmental compensation fund so that at least they could get not only some financial support initially, but also some direction as to what other alternatives they could take. The fact that you've clarified that there was a very real problem is helpful to that. I think we could go on and give other examples. It's not just the Fields who have had this experience.

I realize the debate about the environmental compensation fund has taken place, but the fact that there are examples like that — there was another one in the paper, the McIntyres from Orléans. We could on and cite examples of people who really need some help. If the government is not going to be responsible in providing adequate protection up front, they should at least feel some responsibility in providing some financial compensation when they're damaged.

I again would strongly recommend that if this resolution is not appropriate, the committee consider a recommendation to cabinet to look at what would be appropriate alternatives.

Ms Churley: I appreciate the clarification of what happened to the Fields. It seemed to be clear from their presentation that there were two possible sources of the problem: the company and then the person who dug the

well. It seems to me you're saying that as it turned out, it was determined that it was solely the owner of the well who was held responsible.

I don't know if that's correct or not, but I will say that that's what the environmental compensation fund is all about. It was, and still is, until this bill goes through, the payor of last resort. Mrs Field sounded like she had a terrible time, and I don't blame her, suing her elderly neighbour. It sounds as though her elderly neighbour was in no position to pay. I certainly support polluters having to pay. I believe that in situations like the neighbour of Mrs Field, that's again a situation where it in a humane way can click in to help people, because it seems like both these people were victims here for a different reason. That is a very good reason why the environmental compensation fund was set up in the first place.

Now you're saying no to insurance and you're saying no to the compensation fund, which leaves people like Mrs Field and her elderly neighbour extremely vulnerable. That's a fact.

Mr Lalonde: Again, I'd just like to go on the compensation fund, why I still think it should be left in there. I'm just going to give you some examples of what I've gone through lately. In the village of St Pascal, where the whole thing was supervised by the environmental people, the THM, for which the allowed parts per million at the present time is about 150, they had reached 3,300 THM per million. This was a pilot project put in place by the Ministry of Environment. At the present time, you're talking of removing the compensation fund.

I'm going to go to another instance that is going to happen very soon in my district. Vars, Embrun, Russell and Marionville spent millions and millions of dollars; they're on the same aquifer, and still the ministry is giving the approval for those municipalities. I'm talking of over 20,000 population that are serviced by those wells over there. The government is not doing absolutely anything, and given the fact that we are going to remove this compensation fund, I don't know where the people are going to go. For the town of St Pascal, 240 families, the cost was over \$3 million, and they just can't use the water. I attended one of the water expositions they had in the Macdonald building. It does affect the animals; it does affect the quality of milk from the cows. The people had paid up front \$26,000 to connect to those wells. Now they're paying \$4,000 a year and they just can't use the water. The government is not doing anything at the present time. I wonder what's going to happen after this.

The Chair: Any further comment? Seeing none, I'll put the question.

Ms Churley: Recorded, please.

The Chair: That's right; Ms Churley asked for a recorded vote. All those in favour?

Ayes

Churley, Lalonde, McLeod.

Nays

Chudleigh, Fisher, Galt, Maves, Munro, Ouellette.

The Chair: The motion is defeated. Any further amendments to section 7?

Ms Churley: I move that section 76 of the Ontario Water Resources Act, as set out in section 7 of the bill, be amended by adding the following subsection:

"Limitation

"(2) A regulation made under clause (1)(c) shall not authorize the charging of fees except from holders of or applicants for a certificate of approval or a provisional certificate of approval."

This is the same as our amendment to the EPA, 175. I am putting forth the amendment for the same reason as under the EPA, and that is that the public should be allowed and be guaranteed access to information they need from the government to protect the environment.

The Chair: Any further comments? Seeing none, I'll put the question. All those in favour of the motion? Contrary? The motion is defeated. Any further amendments?

Ms Churley: I move that section 78 of the Ontario Water —

The Chair: No.

Ms Churley: Where are we?

The Chair: You missed one.

Ms Churley: Did I miss one? I probably have it here. I thought that's the one I just did.

The Chair: You missed 77(6).

Ms Churley: Just give me a second here.

I move that section 76 of the Ontario Water Resources Act, as set out in section 7 of the bill, be amended by adding the following subsection:

"Limitation

"(2) A regulation made under clause (1)(c) shall not authorize the charging of fees except from holders of or applicants for a certificate of approval or a provisional certificate of approval."

The Chair: I'm afraid we just dealt with that one, Ms Churley. Subsection 77(6).

1700

Ms Churley: Somebody just handed me — it did all sound very familiar. That's your fault.

Mrs McLeod: That's my fault.

Ms Churley: Oh, oh. Now they're coming at me. Okay.

The Chair: You shouldn't shuffle and deal your papers. Let's start over again.

Ms Churley: Stop me early if I'm not on the right one.

I move that subsection 77(6) — yes? — of the Ontario Water Resources Act, as set out in section 7 of the bill, be amended by adding at the end "and such materials shall be posted in the registry under the Environmental Bill of Rights, 1993 and the text made available to the public free of charge."

Mrs Fisher: The discussion we had regarding that motion was the discussion — the argument was out of context to the motion that was being read, because Ms Churley did make —

The Chair: Ms Churley hadn't spoken to her motion yet.

Mrs Fisher: No, but she did prior. For the record's sake, just putting things in order, the argument you gave a few minutes ago to the past motion was the argument you're now going to give to this one, and I think you

probably have another argument over there for the one we just defeated.

The Chair: We'll let Ms Churley put on the record whatever she chooses to.

Mrs Fisher: Yes, I agree.

The Chair: Do you wish to speak to the motion, Ms Churley?

Ms Churley: Yes, I do. I didn't quite understand Mrs Fisher's point, however.

Mrs Fisher: I'll explain it if she wants me to. You were talking about access to information and the public not — and that is the argument that supports the motion we are now dealing with?

Ms Churley: Yes.

Mrs Fisher: I was just saying that I think maybe we got out of context of what debate you were giving in terms of support of your motion. That's all I'm saying.

Ms Churley: Oh, I see. You don't want me to say it again.

Mrs Fisher: You can say it again. Be glad to hear it.

Mrs McLeod: The motion is actually out of order.

Ms Churley: Yes.

Mrs McLeod: The motions are so similar that the two motions back to back —

Ms Churley: Yes.

Mrs McLeod: That's why I thought that if the one that was coming up was the one on the fees, because we hadn't spoken to the fees as yet —

The Chair: Well, let's let Ms Churley speak to this one, even if it is a duplicate.

Ms Churley: In the interests of time, because I have something important to say a little later on, I've given my amendment and let's just vote on it unless somebody else would like to speak to it.

The Chair: Thank you. Any further comment? Seeing none, I'll put the question. All those in favour of the motion? Contrary? The motion is defeated.

Further amendments to section 7?

Mrs McLeod: I move that section 77 of the Ontario Water Resources Act, as set out in section 7 of the bill, be amended by adding the following subsections:

"Public availability

"(7) Despite subsection (4), a code, formula, standard, protocol or procedure shall not be adopted by reference unless that which is proposed to be adopted, including a clear statement of how and where the text of what is to be adopted will be generally made available to the public and the cost to the public of access to the text, is published in the registry under the Environmental Bill of Rights, 1993.

"Same

"(8) Any code, formula, standard, protocol or procedure that is adopted by reference and that is not published in the Ontario Gazette shall be made available free of charge, during regular business hours, to the public."

This is complementary to the amendment which was just defeated, placed by the NDP, and again just speaks to our concern that given the arbitrary powers being taken unto the cabinet, there be some reasonable process of public notification so that there can be some hope of a measure of public accountability being introduced to this process.

The Chair: Further comment? Seeing none, all those in favour of the motion? Contrary? The motion is defeated.

Further amendments to section 7?

Mrs McLeod: I move that section 78 of the Ontario Water Resources Act, as set out in section 7 of the bill, be struck out.

I'm not sure that we need to revisit the debate other than to say I still feel as strongly as I did 15 minutes ago that there is no excuse for government seeking to exempt itself from any liability whatsoever even as they give themselves incredible power to unilaterally regulate environmental issues.

The Chair: Is there further comment?

Ms Churley: Just for the record again, the NDP has the same amendment for the same reasons. I reiterate again how out of all of the problems I have with this bill, how shocked I am in this one area that the government is supporting such a draconian amendment that is really going to hurt the public.

The Chair: Further comment? Seeing none, all those in favour of the motion? Contrary? The motion is defeated.

Any further comments or amendments on section 7?

Mrs McLeod: Mr Chairman, I believe that the further amendment that we have would be ruled out of order, as it was on the Environmental Protection Act, so I'll defer to a discussion of a resolution to cabinet. So we'll withdraw the amendment.

The Chair: Any further amendments or discussion of section 7? Seeing none, I'll put the question: Is it the favour of the committee that section 7, as amended, carry? All those in favour? Contrary? Section 7, as amended, is carried.

Are there any amendments to sections 8 or 9 of the bill? Seeing none, is it the favour of the committee that sections 8 and 9 carry? All those in favour? Contrary? Sections 8 and 9 carry.

Any amendments to section 10 of the bill?

Ms Churley: I move that section 10 of the bill be amended by adding the following subsections:

"Same

"(2) Nothing in this act limits or affects the right of any person to obtain interim or final compensation for any claims accruing before June 3, 1996 for which notice of loss was filed with the Environmental Compensation Corporation before June 3, 1996.

"Same

"(3) In the absence of the Environmental Compensation Corporation, any person undertaking environmentally significant activities that could result in spills or other environmental harm is required to obtain environmental liability insurance in an amount specified by regulation."

I am going to go over this ground again. It's not just for the record but because I still don't think we have received a reasonable explanation from the government as to why it's getting rid of the Environmental Compensation Corp. The minister made reference to the fact that the ECC cost more than \$3 million over the past decade but hasn't paid out that amount to spill victims or spill creditors. I find this incredibly misleading in terms of trying to justify why you get rid of it.

The ECC has operated at or below its allocated annual budgets, and of course it isn't supposed to be awarding lavish amounts of money. I would say it's to their credit that they haven't been putting out much money. It shows that they are doing their job, that they really are the payor of last resort. I find that what's happening is that the government is criticizing ECC for doing a good job, for doing its job well. That's number one. I should say that there's a way to revamp the ECC so that you're not spending so much money on the administration. But it clearly is doing a good job in protecting the environment, protecting people and keeping costs down.

The other thing that is important to remember is that the large majority of ECC payouts have been to cover cleanup costs. We're talking about two things here. We're talking about protecting people like Mr and Mrs Field, who through no fault of their own may be financially wiped out, but we're also talking about a situation like perhaps what happened in the east end of Toronto recently had that been on somebody's private property or even where it is now.

1710

The situation in the past has been that municipalities have often ended up having to clean up spills, and they had the reasonable expectation that at the end of the day, after going through all of the processes, if they couldn't find the money from the polluter, there would be this fund so that they could recover their costs. I would say that with the cuts to municipalities that have already happened — and we expect more to come — it's going to be harder and harder for municipalities to find money in their budgets to clean up spills and it's going to be especially harder if they're in a situation where they know there's no backup whatsoever. In the interests of protecting the public, it's important that the government commit to retaining the ECC in some other form at the end of the day, even if it's just to facilitate or encourage the very quick cleanup of spills.

Another issue I'd like to raise that is really important is that the government hasn't released — I've checked this — the most recent ECC annual report, for the period of 1995-96. Section 121 of the EPA requires the minister to table the report in the Legislature. Now, it's my understanding — correct me if I'm wrong — that the practice is to table the report within six months of the fiscal year-end. That means that the report should have been tabled in September, and it wasn't. I want to request Dr Galt, when he's ready after being briefed, that the government commit to the immediate tabling of this report and that it be done before we carry on with passing the bill in this House, because I think we might get some very interesting information in this report that would benefit government members as well.

My last point on the ECC is that it's a matter of fairness and proper statutory interpretation that Bill 57 be amended to ensure that pending compensation claims are not prejudiced by the winding down of the ECC. That's what I've put into my amendment. My preference is that we keep the ECC, that it be restructured so it doesn't cost as much to administer it, although it's not a huge cost overall. It's doing its job in being the payor of last resort. It's doing it efficiently and it's doing it well.

For the peanuts that are saved for the government's tax cut, in terms of the long-term problems that it's going to cost individual human beings like the Fields and for environmental damage that may happen — municipalities will be reluctant to immediately clean up spills because this last resort is gone — I would plead, and I'm serious here, with the government members to accept my amendment on this particular clause and go back to your minister, go back to your government, and say: "Sorry, but there's absolutely no reason except to save a couple of million bucks to get rid of this. It's working well. We have the proof it's working well. For the long-term damage it's going to cause, it's not worth it. This one is going to come back to haunt us big time." I would say in rural areas it's going to be a major problem.

This does not make sense in terms of streamlining, cutting red tape — none of it. This one is really stupid, and there's no justification for it. I hope and I plead that the government members will support this amendment. You can go back to the government — after all, it's not a huge expenditure — with a sheet of paper giving all the reasons why this ECC should be saved; that you're willing to sit down and work to restructure it, but you're going to stand up for the people of Ontario who get hammered by the system, which happens from time to time. This is one of those good ideas that has worked and is working well, and there's no excuse to get rid of it. I strongly urge the members. This is a non-partisan plea. It makes no sense whatsoever to get rid of it, it makes total sense to keep it and it doesn't cost very much money.

Mrs McLeod: I want to add to the comments Ms Churley has made in support of the motion and the amendment. I find it really ironic, and I think it should be noted for the record, that the sole reason that's been offered by the government for getting rid of the environmental compensation fund is that it has not spent very much money. For that very reason it should come back to haunt a Conservative government that a fund that was working effectively as a funding of last resort for individuals is being eliminated because it wasn't seen to have spent enough.

I would also seriously ask each of the members opposite to think about the kind of situation Mr Lalonde described in his constituency and imagine yourself in your constituency office on a Friday afternoon when a constituent comes in with the kind of case Mr Lalonde was describing and how you will feel in having to say to that constituent, "I'm sorry, but we no longer have any recourse we can offer you because our government just removed any possible recourse you could have." That is an untenable position for any individual MPP to be in. I would not want to have to say to my constituent, "I'm sorry but we just eliminated your one source of support."

Ms Churley: I did have two questions for Dr Galt. I don't know, Dr Galt, if you were able to hear me when I was talking about the annual report, which has not been submitted to the Legislature.

Mr Galt: The annual report?

Ms Churley: Okay, you didn't. I'll very quickly repeat it, because I want to ask a question. The minister hasn't released the most recent ECC annual report, for the period of 1995-96. Section 121 of the EPA requires the

minister to do that, to table it in the Legislature. It's normal practice to submit it within six months of the fiscal year-end, and that means the report should have been submitted in September. Will you commit to the immediate release of this report? Because it's already late.

Mr Galt: It's my understanding that the annual report of the ECC will be released very shortly. Probably some delay relates to the change in cabinet, a new minister in a new portfolio.

I point out with regard to subsection 2, in connection with notice of loss, in getting rid of the ECC it was necessary to establish a time for application, being up until the time the bill was brought in. That was established, and it's quite common with bills being brought forth on cutoff dates for certain activities.

In connection with insurance, that's already in the legislation. We do not require further legislation.

Ms Churley: I think it's important — and I will be raising this in the House repeatedly; be forewarned — that this report be submitted immediately. We're about to wind down a workable corporation that is actually doing its job, and that's what I've been pointing out. There's no justification for getting rid of it. I think it's important, before we pass this bill in the House, that the Legislature take a look and see how it's working. So I would like to have a commitment. I see you can't give me that today, but perhaps you can go back and consult with the minister about this. But I will be raising it daily, or almost daily, anyway.

Mr Galt: I'm just going to point out that I don't think it's a system that works when for every \$4 you pay for administration, \$1 goes to the people who are having a problem. I would suggest that's a broken system.

Ms Churley: Unfortunately, Dr Galt was consulting a lot during the time I was giving my reasons for why this organization or corporation should be kept in place, because that is just a pat answer. I'm convinced that could be proved if we could see the annual report.

I said, and other groups made this point too, that if you think it's costing too much money, revamp it, restructure it. There must be a way to do that. Keep it in place. It is doing its job. You're firing them, getting rid of them, for doing their job. It could have been helped. Would you feel better about putting out more money? I think we should be very proud of them. They've been actually doing their job — the payor of last resort — and they haven't put out very much money. But I'll bet you every dollar they've put out absolutely needed to be put out. So this excuse for \$4 for every \$1 you put out just doesn't make any sense.

Restructure it. You're saying that you're throwing the baby out with the bathwater. You're not saying the program's bad, you're not saying it isn't needed; what you're saying is that it's costing too much money to run for the piddling little amount of money they put out. Okay, find a way to restructure it so that it's still there, the fund is still there for the very good reasons it needs to be there that we've talked about today.

1720

I submit, and I said to the members of your government, that would be a reasonable amendment. It's not

even a lot of money in the whole scheme of things now. If you went back, I believe, to your minister and said, "Yes, the opposition happens to be right on this one" — this is not about red tape. This is not about any of that stuff. This is good common sense and you're throwing it out for no reason, except to save a few bucks.

I suggest you support my amendment. I suggest you find a way to restructure it. You're not going to get away with this one. It's going to cause a lot of trouble.

Having said that, my second question is, if you don't accept this amendment, what is going to happen to the people who are now pending compensation claims? Are they going to be out of the system or are they going to be grandparented or what, those who are pending compensation claims at this time or whose claims will still be active when the plan winds down?

Mr Galt: Those whose applications were in prior to June 4 will be processed. When the six months are up for the staff on ECC, that will be transferred into the ministry and the ministry will continue with those claims where the application came in prior to June 4. They will be completed.

Ms Churley: Prior to June 4?

Mr Galt: In other words, June 3 or earlier.

Mrs McLeod: It's exactly that response of government, that reason for eliminating the environmental compensation fund, that I find so incredible. It's equally incredible to me that you would reiterate it as a seeming defence of the action that's being taken here.

Just take a moment and seriously examine the words you've been given to say in defence of what the government is directing you to do here today. You're saying that the fund is costing more to administer than it's actually paying out, and therefore you want to shut the entire fund down. If you think the reason the fund is costing more in administration than it's paying out is because the administration is somehow ineffective or top-heavy, then as Ms Churley has said, you look at restructuring. You talk about restructuring continuously. You look at restructuring the administration so it works more efficiently, so that it has fewer people, if that's what you believe is needed. You get your administrative costs in line.

The other alternative is to believe the administration costs more than the fund is paying out because the administration is spending its resources in thoroughly investigating the claims and is not paying out for any claims it doesn't feel are absolutely legitimate. I think that is the record of the compensation fund, that it cannot be confused of having responded with excess amounts of money or to any kind of frivolous claim. I suspect it takes a fair bit of work and a fair bit of administration to make sure you're not paying out large sums of money on the government's behalf when it really isn't called for. So the fact they are spending less in payouts than on administration is probably a good defence of the fund.

It may also be, and I think this gets closer to the truth, that the fund is not paying out enough because not enough people have heard about it and that the government is concerned that people may become aware the fund exists and may make claims on it and it may escalate in terms of what's being paid out, so get rid of it now, before people can really access it.

The other possibility, and this is the one that worries me most, and I suspect the government in proposing this is really concerned about this, is that there is significant potential for greater environmental damage as a result of the other provisions of this bill, and you don't want to be saddled with any responsibility for any kind of compensation, so get rid of the fund. I totally reject on all those counts the argument that you've offered in terms of a reason to disband it.

The Chair: Further comment? Seeing none, I'll put the question. All those in favour of the motion?

Ms Churley: Recorded vote.

Ayes

Churley, Lalonde, McLeod.

Nays

Chudleigh, Fisher, Galt, Maves, Munro, Ouellette, Tascona.

The Chair: The motion is defeated. Any further comments or amendments to section 10? Is it the favour of the committee that section 10 carry? All those in favour? Contrary? Section 10 is carried.

Are there any amendments to section 11 of the bill? Is it the favour of the committee that section 11 carry? All those in favour? Contrary? Section 11 is carried.

Is it the favour of the committee that section 12, the short title of the bill, carry? All those in favour? Contrary? Section 12 is carried.

Shall the long title of the bill carry? All those in favour? Contrary? The long title is carried.

Shall Bill 57, as amended, carry? All those in favour? Contrary? Bill 57 is carried.

Shall Bill 57, as amended, be reported to the House? All those in favour? Contrary? Bill 57 shall be reported to the House.

If we can ask the indulgence of all the committee members, Ms McLeod and Ms Churley have requested consideration of a resolution that would be sent, if I'm phrasing your question properly, Ms McLeod, to the environment minister, if you care to fashion that as a formal resolution or recommendation.

Mrs McLeod: There were two areas that I indicated, if it was felt to be inappropriate by the committee to include our amendments in the bill, we would ask the committee to consider recommending to cabinet for some further consideration in another form.

One of those areas was some alternative to allow private individuals some recourse to financial compensation with one possibility being the requirement that companies engaged in seeking certificates of approval for environmentally sensitive work would be required to have liability insurance, and I would be happy to place that as a resolution. The other was in the area that — this is the one I originally raised with you — any fees that were collected under either the Environmental Protection Act or the Ontario Water Resources Act as a result of the bill would be directed into a separate fund and would be allocated for environmental protection purposes. Shall I place both of those now as resolutions?

The Chair: Yes. Actually, perhaps my choice of words — in Bill 49 we did it as a recommendation,

which was seen as a friendlier way, and quite frankly, not to interfere in the process, also as a way of perhaps currying greater favour than something as a resolution.

Mrs McLeod: I accept that as guidance. I'd be happy to do it in any way in which we could get some consideration of these issues.

The Chair: If it assists in focusing the debate, perhaps it could be as simple as prefacing one of your formal motions with words to the effect that, "The committee recommends to the Minister of Environment and Energy that he give serious consideration to the requirement that," and then again, if I may suggest, the second half of Ms Churley's motion in section 10 deals with environmental compensation in the form of insurance and your subsection 2.1(3) — I'm sorry.

Mrs McLeod: Clause (f.i) on section 7 of the water resources bill and we had one under the EPA.

The Chair: I wonder if the more concise definition is your 123.1(1).

Mrs McLeod: On that particular issue, that's different from the liability insurance; however, if that's the direction —

The Chair: Okay. If you are more comfortable with your wording for liability insurance than the NDP one —

Mrs McLeod: I'm quite comfortable because I think the direction's the same. The only thing I would suggest is that — quite frankly, we didn't know what the best alternative was as the environmental compensation fund is removed and we obviously feel very strongly that the ideal is not to remove the environmental compensation fund. So what we're really looking for is some alternative that would provide some financial protection for individuals.

We came up, and obviously the NDP did — there was no collusion — with the idea that requiring liability insurance is one way to provide protection. We would certainly like to recommend that be an alternative that's looked at, but I would be happy if the committee was prepared to ask cabinet to ask the minister to look at some other alternatives. Maybe this is not the best way of doing it, maybe there is some way that could be found that would meet the basic principle of providing some financial recourse for individuals who have been harmed.

1730

The Chair: Dr Galt, we certainly turn to you for some guidance on behalf of the government members whether you would be prepared to take such a recommendation back to the minister, couched in such a way that it is merely — not merely — it is requesting that he pay heed to the motions which were out of order, given our rules regarding the direction or allocation of funds, that he give consideration to this in the context of whatever other plans he has.

Mr Galt: I appreciate the comments that are coming from the opposition parties and they're certainly welcome to present their ideas and thoughts to the minister, and to cabinet for cabinet's consideration, but I will not be supporting that motion.

Mrs McLeod: Not even a motion to ask him to consider it? That's phenomenal.

Ms Fisher: If I may speak to it as well, I guess if in sincerity you want the recommendations to go forward

maybe we'd better find another way because I personally will be speaking against it. If you want some consideration, maybe another tool might be used.

If I might address it, since we've had an opportunity to hear discussion on both of them already, with regard to the liability side of it, in fairness I heard you, Mrs McLeod, when you talked about if you had a constituent walk into your office. Well, we've been there, we've done it, we have them. I have them. I have them from the time your government was in power and then it went through five more years and we're still sitting on the same case unresolved. I don't call that acting in good faith for the constituent. It's outstanding on my desk right now through two previous governments. This did nothing to help them. All it's doing is making some lawyer rich somewhere. It's not resolving the problems we have and I think there's another way to do that.

If there's a compensation issue, that would be dealt with in a court ultimately in the end as well. As private sector, we have a responsibility to protect ourselves, and you can make a claim for legal costs at the end in the event you're successful. If not, why should government be paying to defeat itself? So I personally have a problem with that. I see your sincerity, and I know it's true, but I don't think the resolve is here.

I have a case in my office right now that's eight years old: infiltration from some asphalt sitting on some farmer's property who did not know it when they purchased it. It's much along the line we have here with salt and water. It went through your government and then it went through five more years and now I've got it, and that didn't help them at all. I am not so sure that the cost-effectiveness is doing anything in favour of the constituent. It hasn't proved that way to me.

I hear what you say: in fact they pay out less than they cost. I'm not so sure that's a reason you do something like this. I think we, on a personal basis, as a society, have to be responsible for ourselves. I liken it to house insurance. If you don't pay, does the government come in behind you and pay it? I liken it to car insurance. I liken it to health insurance, where in fact government does come in in health insurance and pay it, because of the right of health. On that argument, I would vote against it. So I'm not sure that your recommendation will hold water with me.

On the second issue of reserving the funds to an allocated account, in the instances that the precedent's been set to date that I can remember, I would say that where it's a self-sustaining account, and in fact is meant to pay for something, it would never pay for itself. There's nothing in this thing where we take some fees or minimal fees for something that could be charged that could pay for the service ultimately that would be required under the trust fund.

My personal opinion is that I would not be advising any government of any day to start allocating all these special little pots of gold that ultimately never get tapped because maybe there's never an occurrence that bears down on them, or never get utilized because you collect more than you should be doing, and in most cases would never be a self-sustaining account and you'd have to dip into the common coffer anyway to pay the fee.

On those two bases for those two recommendations, I would not only speak against them, and I encourage my committee member peers to agree with me, but vote against them. If there's another way of making your point known, I would open the door for further discussion. I would ask for further discussion on what an alternative mode might be, but I can't see supporting it on those bases.

Mrs McLeod: If all the government members feel as Mrs Fisher does, then there's not much point in pursuing a discussion because our basic principles are fundamentally opposed. I do believe that the government has a responsibility to provide some financial support, guidance and direction for people who are harmed through no fault of their own. I don't believe private individuals should be victimized, and I particularly don't feel they should be left to be potential victims when a government is making it entirely possible for there to be even greater environmental damage caused because of a lack of due process in the environmental approvals process.

I don't know of the specific case that Mrs Fisher is raising. I don't know whether the Environmental Compensation Corp was approached and has been reluctant to pay in this particular case, because they are a payer of last resort. One of the reasons why, as the government has said, there has not been a lot paid out is because they have been very careful to be the payer of last resort. They have not been a free-spending government agency, maybe to a fault. Maybe that's what's causing their demise, and maybe your constituent has encountered their perhaps excessive caution. I don't know the circumstances. I know there are others, like the Fields and I believe it's the McIntyres, who just are two examples we know of where the compensation fund was a godsend at the end of a very long road.

It's never going to be easy for these individuals, but we should provide some hope for them. If you don't believe that, if you believe that the court system is the only way, and a private individual, even though this was not something within their control, has to find the thousands of dollars that it takes to use the court system before they can get any support or guidance at all, then we're at such odds that I don't know what alternative we could come out with. I don't know if you see some way to provide support.

On the issue of the fees, again there is a very basic principle. Our recommendation on the fees, in terms of fees under this act being put into a targeted fund for environmental purposes and then being allocated for environmental protection purposes, is an alternative to not having fees charged for work that is being undertaken in a way which is environmentally valuable. The act is requiring people to undertake cautions in environmentally sensitive work, to be inspected, to get the approvals, and the question is, should people be charged fees for that? The issue for the government is that we should charge a fee in order to recover our costs. We think that's an argument that we can sustain. It's legitimate to have some fees in order to carry out the environmentally important work, but it should be clear that the fees are targeted for that work.

Ms Churley: I'm not going to get into a big argument on this. It's clear to me, and it's been clear for some time, that the member for Bruce, and most of the members, I would say, from the Tory party, have fundamentally different principles than I and my party do about many matters, including environmental protection and who should be responsible for what. I understand there is no point in arguing the case here. I don't think we're even speaking the same language, there is such a gulf.

Having said that, what I will say is, let cabinet decide whether or not — you've got your opinion, Mrs Fisher, I've got mine, and everybody here has an opinion. All we're asking today, because our motions were ruled out of order, in a friendly way — and I take your suggestion, it's not a resolution — is, "Look, these are a couple of areas the committee determined may be," I'm willing to even say "may be" — "problematic, and we would therefore like, we would therefore respectfully request, the cabinet to look at the possibility of alternatives."

We don't have to agree on this committee today. I think it is reasonable and fair to be able to ask the cabinet, because we cannot deal with it in the purview of this committee, to think about alternatives. They can say no, they can say yes. That's all we're asking here, and I think that is entirely reasonable.

Mrs Fisher: I, with some hesitancy, will speak to this again. To Mrs McLeod: I agree with you that if it's an act enacted upon somebody through no fault of their own, that does not differ from a car accident that happens to a person or a house that burns down through no fault of their own. Because this is the environment, I guess to tie my comment into addressing your point as well as Ms Churley's, no party at this table has a sacred right to ensuring the safety and the preservation of environmental issues. What I'm saying is that I don't disagree with you about "through any act of their own," but it's who pays. The difference I was trying to draw when I made the statement is what might be the difference between being hit by a car through no fault of my own — the government doesn't come to my rescue with a secret pot of money to protect me. There are means and ways of going about that. All I'm saying is that I guess philosophically we will agree to disagree, that in fact perhaps that's not a government's responsibility.

I don't think it's much different than the same as Ms Churley starts out. I'm not so sure our environmental ideals differ that much. I think perhaps what differs is our governments' approach on how we deal with those ideals, and that's what we're trying to come to, some type of meeting of the minds, if you will. I don't imagine it's going to happen around this table on many occasions, but it's not because anybody sitting here has less understanding or less appreciation of environmental issues, as you say. It's because there's a different way, maybe, of approaching it than in the past.

Mrs McLeod: I appreciate your making my argument for me with the two other precedents that you've used. My assumption is that if somebody's house burns down, unless it's been struck by lightning and is natural causes, and I don't expect government to protect against natural causes, then the individual is responsible for having insurance on that house in order to protect themselves

against a fire which could be of their own causing or a natural cause.

On auto insurance the government requires by law, a law that you are about to change but to maintain, that there be minimum amounts of insurance coverage. You cannot drive a car without having basic insurance as required by the government, and that is in order to protect other individuals against harm caused by an accident that they were not responsible for. So the principle is established.

If you want to extend it to OHIP, to health insurance, which you used in your original comments, that's one where government clearly says, "We have a responsibility to provide for the insurance for health for individuals, for every citizen." In environmental issues there is a direct correlation with health.

The Chair: Are there any new points to be added to the debate? Seeing none, I don't believe we reach any conclusion, with no resolution on the floor. I thank for everyone for their —

Mr Churley: No, no. I have one last motion. I'm sorry. I should have told you. I move that Bill 57 not be tabled in the House until the annual general report for the 1995-96 period of the ECC is presented to the Legislature.

The Chair: Everyone understands the motion Ms Churley has put forward?

Interjection: We've already moved it.

The Chair: We've moved that we will table it. She's putting a time consideration on that tabling.

Mrs Fisher: The motion's passed.

The Chair: No, no. We have agreed it will be tabled, without specifying the date. Normally it's as soon as possible. It's normally the next day. Ms Churley has made a motion that would now speak to a time qualification for that.

Ms Churley: May I speak to it?

The Chair: Yes, Ms Churley.

Ms Churley: I put forward this motion because I believe it's important that we maintain some form of the ECC. I believe that if we were able as legislators, all of us, to see the annual report before this bill is actually passed, there may be an opportunity to come back to this issue and actually find a way to preserve the ECC in some form.

The Chair: Further comments? Seeing none, I'll put the question. All those in favour of Ms Churley's motion?

Ms Churley: Recorded vote, please.

The Chair: Ms Churley has asked for a recorded vote.

Ayes

Churley, Lalonde, McLeod.

Nays

Chudleigh, Fisher, Galt, Maves, Munro, Ouellette, Tascona.

The Chair: The motion is defeated. There being nothing else before the committee, the committee stands adjourned until the call of the Chair.

The committee adjourned at 1744.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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*Mr Joseph N. Tascona (Simcoe Centre PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mr Michael Gravelle (Port Arthur L) for Mr Hoy

Mrs Lyn McLeod (Fort William L) for Mr Duncan

Mrs Julia Munro (Durham-York PC) for Mr Carroll

Clerk / Greffier: Mr Todd Decker

Staff / Personnel: Mr Doug Beecroft, legislative counsel

Mr Bob Shaw, assistant director, central region,
Ministry of Environment and Energy

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First Session, 36th Parliament

**Assemblée législative
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Première session, 36^e législature

**Official Report
of Debates
(Hansard)**

Monday 9 December 1996

**Journal
des débats
(Hansard)**

Lundi 9 décembre 1996

**Standing committee on
resources development**

**Comité permanent du
développement des ressources**

Better Local Government Act, 1996

**Loi de 1996 sur l'amélioration
des administrations locales**



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENT

Monday 9 December 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Lundi 9 décembre 1996

The committee met at 1611 in committee room 1.

SUBCOMMITTEE REPORT

The Chair (Mr Steve Gilchrist): Good afternoon. The first order of business is the approval of the subcommittee report. Does somebody care to move its adoption?

Mr John R. Baird (Nepean): So moved.

The Chair: Any discussion of the subcommittee report? Seeing none, all those in favour of its adoption? Contrary? The subcommittee report is adopted.

BETTER LOCAL GOVERNMENT ACT, 1996

LOI DE 1996 SUR L'AMÉLIORATION
DES ADMINISTRATIONS LOCALES

Bill 86, An Act to provide for better local government by updating and streamlining the Municipal Elections Act, the Municipal Act and related statutes / *Projet de loi 86, Loi prévoyant l'amélioration des administrations locales en modernisant et simplifiant la Loi sur les élections municipales, la Loi sur les municipalités et d'autres lois connexes.*

The Chair: The second order of business will be to move into clause-by-clause consideration. Are there any amendments to section 1 of the act?

Mr Ernie Hardeman (Oxford): I move that section 1 of the bill be amended by adding the following subsection:

"(4) Despite clause 33(4)(a) of the Municipal Elections Act, 1996, in the 1997 regular election nominations may be filed only on or after March 31, 1997."

This is to deal with some of the changes that are taking place in municipal government and to prevent the nominations from being filed in the first three months of the year. We felt it appropriate that we limit it in the implementation year, to delay that until March 31.

The Chair: Any further discussion on the amendment? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? The amendment is carried.

Are there any further amendments to section 1 of the act? Any comments? Seeing none, I'll put the question. Is it the favour of the committee that section 1, as amended, carries? All those in favour? Contrary? Section 1, as amended, carried.

Are there any amendments to section 2 of the act? Any comments? Seeing none, I'll put the question. All those in favour that section 2 of the act carries? Contrary? Section 2 is carried.

Section 3: Are there any amendments or comments?

Mr John Gerretsen (Kingston and The Islands): Yes. We move an amendment that subsections 13(6) and (7) be struck out.

We don't quite understand why it would be necessary to have the ultimate appeal with respect to ward boundaries go to the OMB when the size of council is something that's totally determined by the council itself. In order to be consistent, why shouldn't councils have the right to ultimately determine the size of their own wards as well or where the ward boundaries are to be located?

Mr Hardeman: I believe the concern would be that the type of representation in a municipality is governed by whether you have a ward system or elected-at-large. To make sure that everyone is appropriately represented, it was deemed inappropriate that we would allow council to remove that type of representation from individuals in a ward system without at least having it appealable to the Ontario Municipal Board. So we oppose this amendment.

Mr Gerretsen: But you're allowing councils to decide whether there should be a five, a 10 or a 15-member council. Why wouldn't you give them the same authority to determine how the wards are to be structured? Anyway.

Mr Rosario Marchese (Fort York): I have a question of Mr Gerretsen. Subsection (7) talks about "The ministry may, by regulation, prescribe criteria for the purpose of subsection..." and so on. I thought what you were getting at is that you were very concerned about the minister having such a power to prescribe. Is that part of the argument that you're making?

Mr Gerretsen: That's right.

Mr Marchese: That's why you want (7) deleted?

Mr Gerretsen: That's right.

Mr Marchese: Because you're worried about that kind of power.

Mr Gerretsen: Subsections (6) and (7).

Mr Marchese: Right. Yes, I realize. I agree with (7).

The Chair: Any further discussion? Seeing none, I'll put the question? All those in favour of the amendment? Contrary? The amendment is defeated.

Any further amendments to section 3?

Mr Gerretsen: Yes, we have an amendment to sections 13.1 and 13.2, which are on pages 5, 6 and 7.

The Chair: Mr Gerretsen, you certainly can speak to that, but that's not actually a motion. Please do.

Mr Gerretsen: It's exactly the same reason as I gave before. I won't restate the reasons again.

Mr Hardeman: Our comment would be the same. We believe that it is appropriate that council have the ability to assign the number of representatives that will be in an entire municipality, but if the municipality is to be divided up in certain ways — it was there for certain reasons. If that is to be changed, I think those who would be impacted should have the right to appeal to the Ontario Municipal Board.

The Chair: Any further discussion?

Mr Gerretsen: I request that sections 13.1 and 13.2 be dealt with separately and be divided from the rest of the question.

The Chair: That's fine.

Mr Marchese: I have another question of Mr Gerretsen. Subsection 13.1(2) says, "Within 20 days after the clerk gives notice of the bylaw, the minister or any other person or agency may appeal to the municipal board by filing with the clerk a notice of appeal setting out any objection to the bylaw and the reasons in support of the objection."

I'm not quite sure why you're opposed to an agency — I realize that includes the minister — or any other person filing an appeal with the OMB. Why would we be opposed to such a —

Mr Gerretsen: We're basically saying that if you give councils the right to establish their own size, then you should be able to give them the right to determine how the boundaries of the wards are to be structured as well. The size of a council is not appealable to the OMB, so why should the delineation of the wards be?

Mr Marchese: I just think that it's always useful to have within any legislation the power to give people the right to be able to make an appeal to the OMB and give reasons as to why they might be opposed to something. If you take it out, you're taking out a process for a person and/or an agency to be able to give reasons for disagreement. I don't know why we'd want to take that power away from people.

1620

Mr Hardeman: Just a quick comment: I was surprised at the previous vote, that all three members in the opposition would vote against having the right to appeal.

Mr Marchese: Hear, hear.

The Chair: Any further discussion? Seeing none, Mr Gerretsen has asked that I put the question first to subsections 13(1) through (13). All those in favour that subsections 13(1) through (13) carry? Opposed?

Mr Hardeman: Are you voting on the motion?

Mr Gerretsen: Call that vote again, please.

The Chair: That's not a vote. That was not a motion on the floor. Mr Gerretsen was just making comments. I will put the question again, clarify it.

We are voting on the bill, as written, subsection 13(1) through subsection 13(13). All those in favour? Contrary? Those subsections carries.

Mr Gerretsen has asked that we vote separately on section 13.1. All those in favour that section 13.1 carry? Contrary? Section 13.1 is carried.

Similarly, section 13.2: All those in favour? Contrary? Section 13.2 is carried.

The balance of section 3: All those in favour? Contrary? The balance of section 3 is carried.

Section 4 of the act: Are there are amendments or comments?

Mr Hardeman: I move that subsections 26(4) and (5) of the Municipal Act, as set out in section 4 of the bill, be struck out and the following substituted:

"Effective date

"(4) A bylaw that is passed under subsection (1) after January 1 in the year of a regular election does not come into force until,

"(a) the conditions listed in subsection (3) are satisfied; and

"(b) the next regular election has taken place.

"Transition, 1997 regular election

"(5) Despite subsection (4), a bylaw passed under subsection (1) on or before March 31, 1997, comes into force for the 1997 regular election if the conditions listed in subsection (3) are satisfied on or before March 31, 1997."

It's to deal with the transition year as it applies for 1997, and then to go back to January 1 in other years. It's a transition movement.

Mr Jean-Marc Lalonde (Prescott and Russell): Just to clarify the date, in the past there were discussions about November 30 and then it was December 31, and now it is confirmed with this motion that you just read that the deadline will be May 31 for identifying a ward system.

Mr Hardeman: No, I think the amendment deals with the fact that in all years subsequent to 1997 the deadline for making changes of council sizes will be January 1. If it's made within the election year, it would not go into effect until the following election. For the year 1997, it is proposed that there would be a three-month extension, that those changes can be made up to March 31 of the election year, which is 1997.

Mr Lalonde: Once again, just to clarify, those who haven't come up with a municipal bylaw to go on a ward system could do so until March 31 at the present time? For 1997 —

Mr Paul Jones: This amendment clarifies that the process has to be satisfied in terms of the conditions —

Mr Hardeman: This is just for the size of county council, isn't it?

Mr Jones: Yes, county council composition.

Mr Hardeman: This does not deal with ward distribution; it's strictly with the size of county council.

The Chair: Excuse me, Mr Hardeman, I wonder if legal counsel could introduce himself for the purposes of Hansard.

Mr Jones: Paul Jones, manager of local government policy with the Ministry of Municipal Affairs and Housing.

The Chair: Thank you, Mr Jones. Does that clarify your concern, Mr Lalonde?

Mr Lalonde: Yes, it does now.

The Chair: Any further discussion? Seeing none, I'll put the question on this amendment. All those in favour of the amendment? Contrary? The amendment is carried.

Mr Hardeman: I move that paragraph 3 of subsection 27(2) of the Municipal Act, as set out in section 4 of the bill, be amended by striking out "whether by ward, by general vote or by a combination of the two."

Again, this is an amendment to clarify and to give county council the ability to change council size in areas where it's elections at large or where there are wards involved in the election process.

The Chair: Any discussion? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? The amendment is carried.

Mr Hardeman: I move that subsections 27(5) and (6) of the Municipal Act, as set out in section 4 of the bill, be struck out and the following substituted:

"Effective date

"(5) A bylaw that is passed under subsection (2) after January 1 in the year of a regular election does not come into force until,

"(a) the conditions listed in subsection (4) are satisfied; and

"(b) the next regular election has taken place.

"Transition, 1997 regular election

"(6) Despite subsection (5), a bylaw passed under subsection (2) on or before March 31, 1997 comes into force for the 1997 regular election if the conditions listed in subsection (4) are satisfied on or before March 31, 1997."

Again, it's a clarifying motion. The deadline date will be January 1 in all years subsequent to the 1997 municipal elections, but it will allow an extra three months for the 1997 municipal elections.

The Chair: Any further discussion on the amendment? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? The amendment is carried.

Any further comments on section 4?

Mr Gerretsen: We recommend that the members of the committee vote against subsections 27(9) and (10). We don't understand why this shouldn't apply to upper-tier municipalities as well and they're specifically included in subsections 27(9) and (10).

Perhaps the parliamentary assistant can give an explanation as to why they're included. It says, "This section does not apply to an upper-tier municipality." Why shouldn't it?

Mr Hardeman: The process, as it applies to the county governments, in a lot of cases does not suit the needs of the upper-tier municipalities because of the structure of their councils. So it's deemed appropriate that by regulation the minister could apply it or not apply the same regulations to the regions, but they do not suit all regions. As an example, I would use the region of Peel. When you look at a majority vote of the population, it is always in the hands of one municipality as opposed to a number of municipalities. The numbers do not necessarily correspond to that function working very well in regions. So it was deemed appropriate that the minister could, by regulation, move them in or out.

The Chair: Any further discussion? Seeing none, I'll put the question. All those in favour that section 4 carry as amended? Opposed? Section 4 carries as amended.

Section 5: Are there any amendments or discussion?

Mr Hardeman: I move that subsections 29(1) and (3) of the Municipal Act, as set out in section 5 of the bill, be struck out and the following substituted:

"Composition and size of council

"(1) The council of a local municipality shall be composed of a head of council and at least four other elected members.

"Bylaw changing number of members

"(3) Subject to subsection (1), the council may pass a bylaw changing the number of its elected members."

This is an amendment to clarify the makeup and the process of reducing the size of council.

1630

The Chair: Any further discussion on the amendment? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? The amendment carries.

Any further amendments or comments to section 5? Seeing none, I'll put the question. All those in favour that section 5, as amended, carry? Contrary? Section 5, as amended, is carried.

Are there any amendments or comments to sections 6 and 7? Seeing none, I'll put the question. All those in favour that sections 6 and 7 carry? Opposed? Sections 6 and 7 are carried.

Section 8 of the act: any amendments or comments?

Mr Hardeman: I move that paragraph 1 of subsection 37(1) of the Municipal Act, as set out in subsection 8(1) of the bill, be amended by striking out "its local board," in the fourth line and substituting "a local board."

This is a clarification, again, that the prohibition on running for election applies to the local board for which you were seeking office, not any local board.

The Chair: Any discussion? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? The amendment is carried.

All those in favour that section 8, as amended, carry? Contrary? Section 8, as amended, is carried.

Any amendments or comments to sections 9 through 15 of the act? Seeing none, I'll put the question. All those in favour that sections 9 through 15 of the act carry? Contrary? Sections 9 through 15 are carried.

Mr Hardeman has an amendment that would add a new section, section 15.1.

Mr Hardeman: I move that the bill be amended by adding the following section:

"15.1 Subsection 112(6) of the act is repealed."

This is an amendment to take a part out of the present act that's no longer required.

Mr Marchese: Does that have the effect of removing the requirement that local boards submit an annual report to council? Is that the effect of this? Yes? No?

Mr Hardeman: If you could just hold on for a minute.

Mr Marchese: I think it would be useful for the lawyer to sit beside you, Mr Hardeman.

The Chair: If you could just introduce yourself first for Hansard, please.

Mr Tom Melville: Tom Melville, legal counsel, Ministry of Municipal Affairs and Housing. This amendment has to do with municipal finance. Since the debt regulation now deals with the issue of guarantees and Ontario Municipal Board approvals, that's no longer required in this section of the act.

The Chair: Any further discussion? I'll put the question, then. All those in favour that section 15.1 carry? Opposed? Section 15.1 is carried.

Any further additions, amendments or comments?

Mr Hardeman: I move that the bill be amended by adding the following section:

"15.2 Subsection 113(3) of the act is repealed."

I believe this is another section identical to or for the same purpose as the previous amendment; it is no longer required.

The Chair: Any further discussion on the amendment? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? Section 15.2 is carried.

Any amendments to section 16 of the act? Seeing none, I'll put the question. All those in favour that section 16 carry? Opposed? Section 16 is carried.

Are there any amendments or comments to sections 17 or 18 of the act? Seeing none, I'll put the question. All those in favour of sections 17 and 18 carrying? Opposed? Sections 17 and 18 are carried.

Section 19 of the act: any amendments, comments?

Mr Hardeman: I move that section 19 of the bill be renumbered as subsection 19(2) and amended by adding the following subsection:

"(1) Subsection 125(1) of the act is repealed and the following substituted:

"Definition

"(1) In this section,

"municipality" means a municipality forming part of a county for municipal purposes."

This is an amendment to include areas where restructurings have taken place where a separated city is now part of the county and requires the ability to be able to debenture through the county structure, which they were previously not able to do.

The Chair: Any further discussion? I should note for the record that the Liberals had an identical motion.

All those in favour of the amendment? Contrary? The amendment is carried.

Any further amendments to section 19 of the act? Seeing none, I'll put the question. Is it the favour of the committee that section 19 carries as amended? Contrary? Section 19, as amended, is carried.

Any comments or amendments to sections 20 through 31 of the act? Seeing none, I'll put the question. Is it the favour of the committee that sections 20 through 31 carry? Contrary? Sections 20 through 31 are carried.

Section 32 of the act: any amendments or comments?

Mr Hardeman: I move that subsection 164(2) of the Municipal Act, as set out in subsection 32(1) of the bill, be amended by striking out "(2), (2.2) and (3)" in the second and third lines and substituting "(2.2), (2.3) and (3)."

Mr Marchese: Explain that.

Mr Gerretsen: Yes, explain that.

Mr Hardeman: The current subsection 32(1) of Bill 86 deals with how contributions are paid into a reserve account and what the rules for their use are. Subsection 32(1) is amended to clarify that reference be made to subsections 163(2.2), (2.3) and (3) instead of subsections 163(2), (2.2) and (3).

Mr Gerretsen: I knew you had an answer to that.

Mr Hardeman: My opportunity to read the instructions.

Mr Marchese: That's very clear.

The Chair: Any further discussion or requests for clarification? Seeing none, we'll put the question.

All those in favour of the amendment? Contrary? The amendment is carried.

I'll put the question on section 32. Is it the favour of the committee that section 32, as amended, carry? Contrary? Section 32, as amended, is carried.

Are there any amendments or comments to sections 33 through 35? Seeing none, I'll put the question. Is it the favour of the committee that sections 33 through 35 carry? Contrary? Sections 33 through 35 are carried.

Section 36 of the act: any amendments or comments?

Mr Hardeman: I move that section 36 of the bill be amended by adding the following subsection:

"(3) Subsection 167.4(4) of the act is repealed and the following substituted:

"Regulations

"(4) For the purposes of subsection (2), the minister may make regulations,

"(a) prescribing additional persons or classes of them with which a municipality may enter into joint investment agreements;

"(b) prescribing conditions to be satisfied before a municipality may enter into a joint investment agreement with a person or class of persons prescribed under clause (a)."

This is, again, to clarify the ability of municipalities to invest.

Mr Marchese: Mr Lawyer, that's what it does?

Mr Melville: Just to correct the record, the purpose of the amendment is to add an additional regulatory power so that the minister can prescribe conditions applying to persons who are authorized to jointly invest with municipalities.

Mr Marchese: Why do we need that?

Mr Melville: In order that conditions could be imposed when, for example, a local board is authorized by regulation to jointly invest its funds with the funds of a municipality. The condition could be, hypothetically, to require —

Interjection: Additional authority?

Mr Melville: It's an additional authority, yes, to require, for example, the consent of, shall we say, the parent municipality before going ahead with that investment.

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The Chair: Any further discussion? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? The amendment is carried.

Is it the favour of the committee that section 36, as amended, carry? All in favour? Contrary? Section 36, as amended, is carried.

Any comments or amendments to sections 37 through 46? Seeing none, I'll put the question. Is it the favour of the committee that sections 37 through 46 carry? Contrary? Sections 37 through 46 are carried.

Section 47 of the act: any amendments or comments?

Mr Hardeman: I move that section 47 of the bill be struck out and the following substituted:

"47. (1) Clause (a) of paragraph 3 of section 207 of the act is amended by striking out "subsection 163(2)" at the end and substituting "section 167."

"Transition

"(2) During the year that begins on the effective date and ends on the first anniversary of the effective date,

"(a) clause (a) of paragraph 3 of section 207 of the act, as it read before the effective date, continues to apply to investments made before the effective date; and

"(b) surplus funds and the reserve fund of a municipal reciprocal exchange may also be invested in securities in which the municipality is permitted to invest under section 167 of the act.

"Same

"(3) An investment referred to in clause (2)(a) shall not be continued after the first anniversary of the effective date unless it is a permitted investment under section 167 of the act.

"Effective date

"(4) For the purposes of subsections (2) and (3), the effective date is the day subsection (3) comes into force.

"(5) Paragraph 25 of section 207 of the act is repealed.

"(6) Clause (a) of paragraph 51 of section 207 of the act is amended by striking out "subsection 163(2)" at the end and substituting "section 167."

"Transition

"(7) During the year that begins on the effective date and ends on the first anniversary of the effective date,

"(a) clause (a) of paragraph 51 of section 207 of the act, as it read before the effective date, continues to apply to investments made before the effective date; and

"(b) surplus funds and the reserve fund of a municipal reciprocal exchange may also be invested in securities in which the municipality is permitted to invest under section 167 of the act.

"Same

"(8) An investment referred to in clause (7)(a) shall not be continued after the first anniversary of the effective date unless it is a permitted investment under section 167 of the act.

"Effective Date

"(9) For the purposes of subsections (7) and (8), the effective date is the day subsection (6) comes into force."

Mr Gerretsen: Don't you just love it when we listen to you, Ernie?

Mr Hardeman: It's great.

Mr Gerretsen: You've got to read two pages.

The Chair: Do you wish to speak to that, Mr Hardeman?

Mr Hardeman: It's just a clarification of the numbers in the act and transfers.

Mr Marchese: Could we get the lawyer just to comment briefly, but in plain vernacular English, on what the implications are of shifting from one area to the other and so on? What can municipalities do? Or — is this a fair question — does it give the tools to municipalities to get into debt because the province is offloading more services on to them, or no?

Mr Hardeman: No.

Mr Marchese: No? Not yet. Not here.

Mr Melville: I can't answer the question as asked, but the purpose of the amendment is to correct a cross-reference to municipal permitted investments so that all municipal permitted investments are established in one place in the Municipal Act. In this case it's talking about reserve funds for municipal insurance purposes and that they would have to be invested in the same places that all other municipal investments — the same investments that are permitted for all other municipal investments.

Mr Marchese: So it's a clarification.

Mr Melville: Yes.

The Chair: Any further discussion? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? The amendment is carried.

Is it the favour of the committee that section 47, as amended, carry? All those in favour? Contrary? Section 47, as amended, is carried.

Any amendments or comments to section 48? Seeing none, I will put the question. It is the favour of the committee that section 48 carries? Contrary? Section 48 is carried.

Any additions?

Mr Hardeman: I move that the bill be amended by adding the following section:

48.1 Subsection 220(13) of the act is amended by striking out "sections 65 and 66" in the first and second lines and substituting "section 65."

Maybe we'll ask the legal branch to —

Mr Melville: It simply corrects a reference to a repealed section by removing that reference.

The Chair: Any further discussion?

Mr Hardeman: It's hard to debate, isn't it?

The Chair: Seeing none, I'll put the question. Is it the favour of the committee that the amendment carry? Contrary? Section 48.1 is carried.

Section 49 of the act: Are there any amendments or comments? Seeing none, I'll put the question. Is it the favour of the committee that section 49 carries? Carried.

Section 50 of the act: Are there any amendments or comments?

Mr Hardeman: I move that clause 50(2)(b) of the bill be amended by striking out "money in the account" and substituting "surplus funds and the reserve fund of a municipal reciprocal exchange."

This is again just a clarification of the wording in the act.

The Chair: Any discussion? Seeing none, I'll put the question. Is it the favour of the committee that the amendment carry? Contrary? The amendment is carried.

Any further amendments to section 50? Seeing none, I'll put the question. Is it the favour of the committee that section 50, as amended, carry? Contrary? Section 50, as amended, is carried.

Section 51 of the act: any amendments or comments?

Mr Hardeman: I move that subsection 284(1) of the Municipal Act, as set out in subsection 51(1) of the bill, be struck out and the following substituted:

"Maintenance of roads and bridges

"(1) The council of the corporation that has jurisdiction over a highway or bridge shall keep it in a state of repair that is reasonable in light of all the circumstances, including the character and location of the highway or bridge."

Mr Gerretsen: Why are you taking the words "or upon which the duty of repairing it is imposed by this act" out? That's the effect of what you're doing to this section.

Mr Hardeman: Could you repeat that?

Mr Gerretsen: If I read 51(1) in the bill, it's exactly the same as what you've just read to us as an amendment except that it includes the words "or upon which the duty of repairing it is imposed by this act." Why are you deleting that wording? What is the reason for it?

Mr Melville: My understanding is that the change was made so that the act would not be unnecessarily restrictive. In other words, the section as revised imposed a general duty, regardless of the act from which it comes, to keep the roads in repair.

Mr Lalonde: I'd just like to have a clarification. When we say "in light of all the circumstances," I'd like to get a definition of this. If the municipality hasn't got the funds available, it could mean that we don't do the repair. Is that what you mean?

Mr Melville: No. I think, to just back up a bit, this section clarifies the common law or codifies the common law that exists now, and the court would have regard to all of the circumstances, including presumably and hypothetically the funding or lack of funding.

Mr Lalonde: That really scares me, that word. To clarify, let's say that a bridge is a real danger. It should be barricaded; it should be closed. The municipality, with the pressure of the rural residents or the local residents, could say, "Yes, we could still have access as long as we don't use 5- or 10-ton trucks to go through it," and then you would have a sign, and the people won't see the sign at night and you could go across the bridge with a truck and cave in through the bridge.

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Mr Hardeman: I think that situation presently exists. All municipalities have the authority, with engineering reports, to put load limits on their bridges if they don't deem it appropriate to replace those bridges to the standard. I think this codifies the standards that would be set, that certain types of roads and certain types of bridges would be kept to, and if a municipality achieves those standards, they would not be held liable for someone going through the stop sign because the stop sign was not bright enough. It's actually codified to say how long the stop sign could be up before it was considered weathered beyond its reasonable recognition.

Mr Lalonde: But it is going to be in the Hansard right now that as long as the municipality achieves the standards set out by the engineer — you cannot go through on a bridge if it doesn't meet the standards, MTO standards. But if the municipality says, "We just can't afford doing the repair on that bridge," and it doesn't meet the standards, really the municipality would be forced to close the bridge then.

Mr Hardeman: I would suggest that under this it would be codified that if it does not meet the standards for that type of traffic, yes, they would have to close the bridge. If they neglected reasonable care and didn't tell the public that that bridge was unsafe or couldn't stand the weight of traffic that was going over it, they would still be held liable.

Mr Lalonde: With all the cuts that are occurring at the present time, I could see the municipalities are going to be forced to close some of the bridges, and some of the roads too.

Mr Marchese: I was just trying to understand what legal counsel was saying before about removing "upon which the duty of repairing it is imposed by this act," and you talked about codifying what's already in common law. What's in common law? What's there? Did someone advise you about removing this? How did we come to this clarification?

Mr Jones: One of the things we've heard from municipalities is that there was a need to codify in legislation what their duty of care and responsibility was with respect to certain things, including roads. This was an attempt to put in legislation words as to what their responsibility and duty of care is with respect to maintenance and standards with respect to roads. This does not allow them to close a road. It doesn't grant them the authority to do that.

Mr Marchese: I appreciate that. I'm just wondering what the elimination of those words does that they don't already have by way of a power.

Mr Melville: The elimination of the words as with respect to this motion?

Mr Marchese: Yes.

Mr Melville: We did answer, but to try again, the words in subsection 51(1) as written in the bill before the amendment talk about the duty imposed by this act. After the amendment, those words are removed, thereby clarifying that it's a general duty. It could be imposed by this act or any act or by the common law.

Mr Gerretsen: I guess this is sort of tied into the whole liability issue. I've got some concern, and I've been both sides of this issue, both on behalf of private clients —

Interjection.

Mr Gerretsen: No, at one time or another, and also on behalf of municipalities, and there seems to be this perception around that somehow the liability aspect that municipalities have in these kind of circumstances is much higher than the general public, let's say, if you're talking about a private road and a private bridge. I think that's a perception that's out there that's not necessarily true at all. If somebody should get hurt as a result, they still have a certain standard of proof to prove and to adhere to etc. By merely taking out those words, "or upon which the duty of repairing it is imposed by this act," I can well see somebody making the argument that at one time there was a higher standard when there was a duty as imposed by a particular act than there will be under the new act when that wording has been deleted from it.

I know we're here as legislators looking after, I suppose, the interests of the province and the interests of municipalities, but there is another side to this issue as well. I don't think we should forget the general public that usually puts these kinds of claims forward. The suggestion that all claims that are put forward by the general public are somehow outrageous or aren't justified I don't think is the proper approach to take. I think that municipalities ought to be kept to the same kinds of standards as anyone would be with respect to their own private property if somebody were to enter upon it as an invitee and something were to happen to them. To somehow lessen that standard on municipalities, I don't think we're doing the general public of the province any favours by doing that. How do you respond to that?

Mr Jones: What you say is the amendment that's being put to you now, because as the legislation is written at first reading, it limits the municipality's requirement to just looking at its requirement under the Municipal Act. In fact, their duty that we want to continue is broader than just the duty under the Municipal Act. It's under any other act; it's under common law. That's why we're taking those words out.

Mr Gerretsen: All right. I'll accept that.

Mr Jones: We want to be sure that we continue the mandatory requirement for municipalities to maintain roads and bridges.

Mr Gerretsen: Right. Thank you.

The Chair: Any further discussion? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? The amendment carries.

Any further amendments to section 51? Seeing none, I'll put the question. Shall section 51, as amended, carry? Contrary? Section 51, as amended, is carried.

Section 52: any amendments or comments? First up would be duplicate motions from the government and the official opposition.

Mr Hardeman: Mr Chairman, I would move, since they are duplicate motions, that we ask Mr Gerretsen to read his.

Mr Gerretsen: That's very decent of you. At least you've given me a short one to read.

I move that the definition of "sewage works" in section 331.1 of the Municipal Act, as set out in section 52 of the bill, be struck out and the following substituted:

"sewage works" means all or any part of facilities for the collection, storage, transmission, treatment or disposal of sewage, including a system under Part VIII of the Environmental Protection Act. ('réseau d'égouts')

The Chair: Do you wish to speak to the motion?

Mr Gerretsen: No, I think it's self-evident.

Mr Baird: Can I get some clarification?

Mr Gerretsen: I think the parliamentary assistant should do the clarification; he always does it well.

Mr Marchese: It's not in your notes?

The Chair: Any further discussion? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? The amendment carries.

Mr Hardeman: I move that subsection 331.2(1) of the Municipal Act, as set out in section 52 of the bill, be struck out and the following substituted:

"Liability in nuisance re water and sewage

"(1) No proceeding based on nuisance, in connection with the escape of water or sewage from sewage works or water works, shall be commenced against,

"(a) a municipality or local board;

"(b) a member of a municipal council or of a local board;

"(c) an officer, employee or agent of a municipality or local board."

This is an amendment to emphasize that not only is a municipality exempt from that type of nuisance liability, but also the members of municipal councils and members of the local boards responsible for those functions.

Mr Marchese: I'm just trying to find the appropriate moments when I want to make my comments; probably at the end for a lot of this stuff so as to make the proceedings go much more smoothly here. I'm doing my best to help you out, Mr Chair. But in this particular section I made my point during the debate in the House. I have some trouble with it because it does shift the responsibility away from municipalities on to the householder, to the owner of a property, and I think that's an additional burden that person is going to have to bear. I find that a problem.

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I realize the government is trying to give some tools to the municipal governments to be able to deal with some financial problems they have incurred or may incur as the government offloads, downloads on to municipalities. But there will be a cost, and if it's not the municipality, it's

going to be somebody else. It's going to be the ordinary person who now has some remedy to seek damages around sewer backup.

Once this comes into effect, that person will not have the protection any longer. The municipality is free of the financial burden, but somebody's picking up the tab, and it's the ordinary Joe who's going to pick up that tab. Services are getting more complicated; people are going to pay more and more for the services because of the things this government is doing. I find that objectionable. It will put a lot of burden on many, many individuals who are finding it difficult to keep up with the type of changes this government is undertaking.

So I'm opposed to this very strongly. I just wanted to put that for the record.

Mr Bart Maves (Niagara Falls): A quick question: If there was an escape of water or sewage from sewage works or waterworks that an employee wilfully made occur, where would that be covered? Would that still be a chargeable offence? Where is that covered?

Mr Hardeman: Could you explain, go through that again, Mr Maves?

Mr Maves: An employee is an exempt if there's an escape of water or sewage from sewage works or waterworks. I'm wondering: If it's the wilfully done by an employee, is there still liability?

Mr Hardeman: The exemption is only for nuisance liability, where it's not the fault of any individual but was an act of God or something that was uncontrollable.

Mr Maves: Sabotage or something like that.

Mr Hardeman: This is not taking liability away from anyone.

Mr Maves: So "based on nuisance" is the key phrase for me.

Mr Marchese: Mr Maves raises a good question in terms of wilful, but how do you prove that? If it were to be the case that there was some wilful tampering or some problem that was caused, we wouldn't ever know that. An individual homeowner would never know whether it was wilfully done or not; you'd have to prove that, and that would be a tough thing to do. Is that in line with what you're asking, Mr Maves?

Mr Maves: It's probably fair that you do have to prove that. I just want to make sure that if it is wilful, there is liability.

Mr Marchese: You'd have to prove wilful, though. Who is going to —

Interjection: The courts.

Mr Marchese: Of course.

The Chair: Any further discussion? Seeing none, I'll put the question. All those in favour of the amendment?

Mr Marchese: I want a recorded vote.

The Chair: Mr Marchese has requested a recorded vote. All those in favour of the amendment?

Clerk of the Committee (Mr Todd Decker): Ms Fisher, Mr Carroll, Mr Chudleigh, Mr Maves, Mr Tascona, Mr Hardeman.

The Chair: All those opposed?

Clerk of the Committee: Mr Lalonde, Mr Gerretsen —

The Chair: Oh, sorry. Your hands were up? All right.

Clerk of the Committee: Mr Lalonde, Mr Gerretsen and Mr Marchese.

The Chair: No. They were voting in favour.

Mr Gerretsen: As hard as it is to believe, we're with you.

Mr Marchese: It is hard.

Clerk of the Committee: It is noted in the record.

The Chair: Noted in the record. Thank you, Mr Marchese. The amendment is carried.

Any further amendments to section 52?

Mr Hardeman: I move that section 331.3 of the Municipal Act, as set out in section 52 of the bill, be struck out and the following substituted:

"Policy decisions

"331.3 No proceeding based on negligence shall be commenced against a municipality, a member of a municipal council or an officer or employee of a municipality in connection with the exercise or non-exercise of a discretionary power or the performance or non-performance of a discretionary function, if the action or inaction results from a policy decision made in a good faith exercise of the discretion."

Again, this amendment clarifies that the nuisance exemptions would apply. If the policy decision had been made to perform the function in that manner, the policy decision would not be subject to nuisance claims.

The Chair: Any discussion?

Mr Marchese: We're on section 52, correct, section 331.3?

The Chair: Yes, sir.

Mr Marchese: I just wanted to say that the effect of this is to put more and more municipal functions in the discretionary category, and I think when we do that the citizens will end up losing out in that regard. I'll be voting against that, Mr Chair.

The Chair: Any further discussion? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? The amendment is carried.

Is it the favour of the committee that section 52, as amended, carry? Contrary? Section 52, as amended, is carried.

Any comments or amendments to sections 53 through 55 of the bill? Seeing none, I'll put the question. All those in favour of sections 53 through 55 carrying? Contrary? Sections 53 through 55 are carried.

Section 56: any amendments or comments?

Mr Gerretsen: Yes, we have an amendment. This deals with the ambulance section, doesn't it? Yes.

I move that clause (b) of section 1 of the Ambulance Act, as set out in subsection 56(1) of the bill, be amended by adding "or designate" in the first line after "judged by a physician."

Now, I've had a second amendment here.

The Chair: Are you going to table that, Mr Gerretsen?

Mr Gerretsen: I'm taking a look at it right now because it was just handed to me. I only have one copy of it, and that would basically be that we add the words "or health care provider designated by a physician" immediately after the phrase "having been judged by a physician."

The Chair: In other words, further defining the word "designate."

Mr Gerretsen: Further defining the word "designate." That's right.

The Chair: Would you wish to make that your amendment?

Mr Gerretsen: Yes.

Mr Hardeman: Mr Chair, I have an amendment to Mr Gerretsen's motion and I think it does what he was suggesting.

I move that this motion be amended to state that clause (b) of the definition of "ambulance" be amended by adding the words "or a health care provider designated by a physician" immediately after the phrase "have been judged by a physician."

Mr Gerretsen: That's the amendment.

Mr Hardeman: Yes, that's the same thing. We have the same people.

Mr Gerretsen: Okay.

The Chair: Mr Gerretsen, in the interests of clarity, would you be interested in withdrawing your first amendment where you just used the words "or designate"?

Mr Gerretsen: Yes. I think he's got both amendments in one document there, so it's better to use that.

The Chair: Everyone has in their packet the original amendment from Mr Gerretsen. The amendment that's now been put forward, instead of the words "or designate," would be "or a health care provider designated by a physician." That is identical to the amendment that Mr Hardeman was proposing, so I believe I can say that both of them are speaking in favour of this amendment.

Is there any need for further clarification? Any further discussion? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? Mr Gerretsen's amendment has passed.

Is it the favour of the committee that section 56, as amended, carry? All those in favour? Contrary? Section 56, as amended, is carried.

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Are there any comments or amendments to sections 57 through 65 of the act? Seeing none, I'll put the question. All those in favour of sections 57 through 65 of the act carrying? Contrary? Sections 57 through 65 are carried.

Section 66 of the act: any amendments or comments?

Mr Hardeman: I move that section 66 of the bill be amended by adding the following subsection:

"(41.1) Section 111 of the act is repealed."

This is a reference in the act that deals with the district of Muskoka requiring OMB approval where no one else requires that same function. It's deemed to be inappropriate to apply just to one area of the province.

The Chair: Any further discussion? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? The amendment carries.

Any further amendments? Seeing none, is it the favour of the committee that section 66, as amended, carry? Section 66 as amended is carried.

Are there any amendments or comments to sections 67 through 70 of the act? Seeing none, I'll put the question. Is it the favour of the committee that sections 67 through 70 carry? Opposed? Sections 67 through 70 are carried.

Section 71 of the act: any amendments or comments?

Mr Hardeman: I move that section 71 of the bill be amended by adding the following subsections:

"(2) Subsection 18(3) of the act is amended by striking out 'subsection 163(2)' in the fifth and sixth lines and substituting 'section 167.'

"Transition

"(3) During the year that begins on the effective date and ends on the first anniversary of the effective date,

"(a) subsection 18(3) of the act, as it read before the effective date, continues to apply to investments made before the effective date; and

"(b) surplus funds and the reserve fund of a municipal reciprocal exchange may also be invested in securities in which the municipality is permitted to invest under section 167 of the Municipal Act.

"Same

"(4) An investment referred to in clause (3)(a) shall not be continued after the first anniversary of the effective date unless it is a permitted investment under section 167 of the Municipal Act.

"Effective date

"(5) For the purposes of subsections (3) and (4), the effective date is the day subsection (1) comes into force."

Again, this is a section to allow the cross-investment of funds.

The Chair: Any further discussion? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? The amendment is carried.

Any further amendments to section 71? Seeing none, I'll put the question. Is it the favour of the committee that section 71, as amended, carry? Opposed? Section 71, as amended, is carried.

Any amendments or comments to section 72? Seeing none, is it the favour of the committee that section 72 carries? Contrary? Section 72 is carried.

Mr Hardeman, you have an addition?

Mr Hardeman: Yes. I move that the bill be amended by adding the following section:

"72.1 (1) Subsection 14(3) of the Municipal Conflict of Interest Act is amended by striking out 'subsection 163(2)' in the last line and substituting 'section 167.'

"Transition

"(3) During the year that begins on the effective date and ends on the first anniversary of the effective date,

"(a) subsection 14(3) of the act, as it read before the effective date, continues to apply to investments made before the effective date; and

"(b) surplus funds and the reserve fund of a municipal reciprocal exchange may also be invested in securities in which the municipality is permitted to invest under section 167 of the Municipal Act.

"Same

"(3) An investment referred to in clause (2)(a) shall not be continued after the first anniversary of the effective date unless it is a permitted investment under section 167 of the Municipal Act.

"Effective date

"(4) For the purposes of subsections (2) and (3), the effective date is the day subsection (1) comes into force."

The Chair: I must indicate to the committee — and I'll give you a few seconds to make your case, Mr Hardeman — that because the Municipal Conflict of Interest Act was not opened up by the bill before us, this motion would need unanimous consent. Mr Hardeman, if you'd like to make your case.

Mr Hardeman: The motion is to deal with the cross-investing of the municipal funds, and we ask for unani-

mous consent to allow it to be done. It relates to all other investments in other areas, and we felt it was appropriate that it would also be covered in the Municipal Conflict of Interest Act.

The Chair: Thank you. Do we have unanimous consent?

Mr Gerretsen: Is it the right thing to do, Mr Hardeman?

Mr Hardeman: Yes.

The Chair: Seeing that we have unanimous consent, is there further discussion? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? The amendment is carried.

Section 73 of the act: any amendments or comments? Seeing none, I'll put the question. All those in favour that section 73 carry? Opposed? Section 73 is carried.

Section 74 of the act: any amendments or comments?

Mr Hardeman: I move that section 74 of the bill be amended by adding the following subsection:

"(11.1) Subsection 11(2) of the act is repealed and the following substituted:

""Dealing with land and personal property

""(2) The power of the Metropolitan corporation to acquire land and personal property for the purposes of the Metropolitan corporation includes the power to acquire, use, sell, lease or otherwise dispose of them for the purposes of the commission."

It's a clarification of wording for dealing with land with Metropolitan Toronto. I would also suggest that this also requires unanimous consent to allow it to be done.

Mr Marchese: What is "the commission"?

Mr Melville: It's the Toronto Transit Commission, the TTC.

Mr Marchese: Should it say that?

Mr Melville: No, it does not need to say that, because in the context of the act that's already been provided for.

The Chair: Legislative counsel, Mr Hardeman, has stated that this is an allowable exception to the rule because other sections of the act have in fact been opened up already by the bill.

Any further discussion? Seeing none, all those in favour of the amendment? Contrary? The amendment is carried.

Any further amendments? Seeing none, is it the favour of the committee that section 74, as amended, carry? Opposed? Section 74, as amended, is carried.

Sections 75 and 76 of the act. Are there any amendments or comments? Seeing none, I'll put the question. Is it the favour of the committee that sections 75 and 76 carry? Opposed? Sections 75 and 76 are carried.

Section 77 of the act: Are there any amendments or comments?

Mr Hardeman: I move that clause 65(3)(a) of the Ontario Municipal Board Act, as set out in subsection 77(1) of the bill, be struck out and the following substituted:

""(a) anything done with the approval of the board, if the approval is,

""(i) provided for by another act or by another provision of this act, and

""(ii) obtained in advance."

Again, this is just a clarification of wording.

The Chair: Any further discussion? Seeing none, all those in favour of the amendment? Contrary? The amendment is carried.

Is it the favour of the committee that section 77, as amended, carry? All those in favour? Contrary? Section 77, as amended, is carried.

1720

Mr Hardeman, do you have another addition?

Mr Hardeman: Yes. I move that the bill be amended by adding the following section:

"Planning Act

"77.1(1) Subsection 40(3) of the Planning Act is amended by striking out 'such securities as a trustee may invest in under the Trustee Act' in the ninth and tenth lines and substituting 'securities in which the municipality is permitted to invest under section 167 of the Municipal Act.'

"Transition

"(2) During the year that begins on the effective date and ends on the first anniversary of the effective date,

"(a) subsection 40(3) of the act, as it read before the effective date, continues to apply to investments made before the effective date; and

"(b) the money in the special account may also be invested in securities in which the municipality is permitted to invest under section 167 of the Municipal Act.

"Same

"(3) An investment referred to in clause (2)(a) shall not be continued after the first anniversary of the effective date unless it is a permitted investment under section 167 of the Municipal Act.

"Effective date

"(4) For the purposes of subsections (2) and (3), the effective date is the day subsection (1) comes into force.

"(5) Subsection 42(16) of the act, as enacted by the Statutes of Ontario, 1994, chapter 23, section 25, is amended by striking out 'such securities as the trustee may invest under the Trustee Act' in the second and third lines and substituting 'securities in which the municipality is permitted to invest under section 167 of the Municipal Act.'

"Transition

"(6) During the year that begins on the effective date and begins of the first anniversary of the effective date,

"(a) subsection 42(16) of the act, as it read before the effective date, continues to apply to investments made before the effective date; and

"(b) the money in the special account may also be invested in securities in which the municipality is permitted to invest under section 167 of the Municipal Act.

"Same

"(7) An investment referred to in clause (6)(a) shall not be continued after the first anniversary of the effective date unless it is a permitted investment under section 167 of the Municipal Act.

"Effective date

"(8) For the purposes of subsections (6) and (7), the effective date is the day subsection (5) comes into force."

The Chair: For the committee's benefit, because the Planning Act was not opened up in the original bill, this motion will require unanimous consent.

Mr Hardeman: It comes to the same grounds, for the requirement to include the cross-referencing of invest-

ments; that municipalities may be able to invest their money from the Planning Act in similar areas and similar transactions as they can in other acts. We ask for that unanimous consent.

Mr Lalonde: Under "Transition," the way you read (2)(a) is different from ours, the one we have.

The Chair: I was following along line by line. I think he said it properly.

Mr Gerretsen: Maybe they handed us a different amendment.

The Chair: I'm sure the clerk wouldn't have done that.

Mr Hardeman: Just for clarification, I will read (2)(a) again:

"(a) subsection 40(3) of the act, as it read before the effective date, continues to apply to investments made before the effective date."

The Chair: Do we have unanimous consent to put the amendment before the committee? Thank you all. Any further discussion? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? The amendment carries.

Section 78 of the act: Are there any amendments or comments? Seeing none, I'll put the question. Is it the favour of the committee that section 78 carry? Contrary? Section 78 is carried.

Section 79: any amendments or comments?

Mr Hardeman: I move that section 79 of the bill be struck out.

The Chair: This motion is out of order. If you want to strike out a section, you would vote against it. Procedurally, you don't delete a section; you would vote against it — as opposed to a subsection, Mr Gerretsen.

Mr Marchese: Quickly, I wanted to thank the parliamentary assistant and the government members for listening to something the opposition has raised. We had serious concerns about this, and I'm happy that in one instance at least the government was paying attention. Thank you very much.

Mr Gerretsen: The first one in a year and a half.

Mr Hardeman: I want to suggest that this is not the first time that the government has withdrawn a section, but we will, as members of government, graciously accept your compliment.

The Chair: Thank you all. Any further discussion of this section? Seeing none, we'll put the question. Is it the favour of the committee that section 79 carries? Opposed? Section 79 is lost.

Sections 80 and 81 of the act: Are there any amendments or comments? Seeing none, I'll put the question: Is it the favour of the committee that sections 80 and 81 carry? All those in favour? Opposed? Sections 80 and 81 are carried.

Section 82 of the act:

Mr Hardeman: I move that subsection 82(1) of the bill be struck out and the following substituted:

"(1) Section 3 of the Regional Municipality of Durham Act, as amended by the Statutes of Ontario, 1993, chapter 3, section 2, is repealed.

"(1.1) Section 6 of the act, as amended by the Statutes of Ontario, 1993, chapter 3, section 2, is further amended,

“(a) by striking out ‘33 members’ in the first line and substituting ‘29 members’;

“(b) by striking out ‘10 members’ in clause 6(b) and substituting ‘seven members’; and

“(c) by striking out ‘three members’ in clause 6(d) and substituting ‘two members.’”

This is an amendment to allow the change in composition and size in council in the region of Durham.

The Chair: Any further discussion? Seeing none, I’ll put the question. All those in favour of the amendment? Contrary? The amendment is carried.

Any further amendments? Seeing none, I’ll put the question: Is it the favour of the committee that section 82, as amended, carry? All in favour? Opposed? Section 82, as amended, is carried.

Section 83: Are there any amendments or comments? Seeing none, I’ll put the question. Is it the favour of the committee that section 83 carries? All in favour? Opposed? Section 83 is carried.

Section 84 of the act:

Mr Hardeman: I move that subsection 84(2) of the bill be struck out and the following substituted:

“(2) Section 6 of the act is amended,

“(a) by striking out ‘25 members’ in the first line and substituting ‘21 members’;

“(b) by striking out ‘eight members’ in clause 6(b) and substituting ‘six members’; and

“(c) by striking out ‘four members’ in clause 6(e) and substituting ‘two members.’”

This is an amendment to deal with the council composition in the region of Halton, the same as the previous one was in Durham. They are locally agreed upon and just being implemented through this act.

The Chair: Any further discussion? Seeing none, I’ll put the question. All those in favour of the amendment? Opposed? The amendment is carried.

Any further amendments? Seeing none, I’ll put the question. Is it the favour of the committee that section 84, as amended, carry? Opposed? Section 84, as amended, is carried.

Are there any comments or amendments to sections 85 through 97? Seeing none, I’ll put the question. Is it the favour of the committee that sections 85 through 97 carry? Sections 85 through 97 are carried.

Section 98:

Mr Hardeman: I move that subsection 98(4) of the bill be struck out and the following substituted:

“(4) Sections 15.1 to 19 and 22 to 40, subsections 47(1) to (4) and (6) to (9), sections 48, 48.1, 50 and 56, subsections 64(6) to (38) and 66(5) to (41), section 68, subsections 71(2) to (5), section 72.1, subsections 74(7) to (10), 74(13) to (15) and 74(17) to (53), sections 77, 77.1, 79 and 80, subsections 81(2) to (39) and sections 93, 94 and 96 come into force on a day to be named by proclamation of the Lieutenant Governor.”

Mr Marchese: What does it all mean?

Mr Hardeman: It’s to relate to the dates that were in the bill that would be changed to deal with the date of the proclamation of the bill rather than as it relates to first reading of the bill. My notes say, “Clarification: Subsection 98(4) of bill 86, which provides for the commencement date of municipal debt and investment

provision, is amended to reflect changes brought about after first reading of the bill.”

1730

Mr Melville: It’s simply a technical change to allow for the numbering changes brought about by the adoption of these motions.

The Chair: Any further discussion? Seeing none, all those in favour of the amendment? Opposed? The amendment is carried.

Any further amendments to section 98? Is it the favour of the committee that section 98, as amended, carry? All in favour? Opposed? Section 98, as amended, is carried.

Section 99: Are there any amendments or comments on section 99? Seeing none, I’ll put the question. Is it the favour of the committee that section 99 carry? All those in favour? Opposed? Section 99 is carried.

Moving into the schedule of the act, are there any comments or amendments to sections —

Mr Gerretsen: I have just a general question, really, more than anything else. Why is the municipal elections matter dealt with by way of a schedule rather than a continuation of the act or a different part in the act? What is the significance of that, having it done by way of a schedule? Is there any?

Mr Scott Gray: I don’t think there’s any particular significance in it other than that it’s a complete rewrite of the act and there’s a whole bunch of other amendments, so you could have stuck them in — legislative counsel can probably speak to it — in the middle of the act.

The Chair: Could you introduce yourself?

Mr Gray: Scott Gray, municipal affairs legal branch. It’s just a drafting style, I think.

Mr Gerretsen: Would the counsel have any comments on that? I’m just curious as to why such an important piece of legislation is done by way of a schedule in another act rather than standing on its own.

Ms Cornelia Schuh: Putting it in a schedule doesn’t indicate that it’s of lesser importance; it’s just as weighty as the sections in the bill itself. It’s technically neater when an entire act is being replaced to do it by way of a schedule when the rest of the bill consists of amendments to a large number of acts. If this had been introduced as a bill by itself, a new Municipal Elections Act, with the repeal of the old municipal elections legislation, there would have been no need for a schedule.

The Chair: So back into our consideration: Are there any amendments or comments to sections 1 through 6 of the schedule? Seeing none, I’ll put the question. All those in favour that sections 1 through 6 carry? Opposed? Sections 1 through 6 are carried.

Section 7:

Mr Hardeman: I move that section 7 of the Municipal Elections Act, 1996, as set out in the schedule to the bill, be amended by adding the following subsection:

“Municipal Act, s.220.1

“(5) Subsections (1) to (4) do not restrict the powers conferred by section 220.1 of the Municipal Act.”

The Chair: Just before you comment, I’ll note for the record that the official opposition had an identical amendment.

Mr Hardeman: I would point out that the Association of Municipal Clerks and Treasurers of Ontario and the

municipal solicitors have stated that there was some doubt as to the ability of municipalities to charge back election cost to other bodies, and this is to clarify that wording, that it in fact can be done.

Mr Marchese: I just want to say for the record again that the government is listening every now and then. This was one of the issues that I had brought forward that was brought by them. It's good to know that the government has made that change in order to protect municipalities, very good.

Mr Joseph N. Tascona (Simcoe Centre): I just want to make sure that Mr Gerretsen adopts that explanation.

Mr Gerretsen: I think it was our amendment. They stole it from us.

Mr Tascona: I take that as a yes.

The Chair: Any further discussion? Seeing none, all those in favour of the amendment? Opposed? That amendment is carried.

Any further amendments to section 7? Seeing none, is it the favour of the committee that section 7, as amended, carry? All in favour? Opposed? Section 7 is carried.

Section 8.

Mr Gerretsen: I move that section 8 of the Municipal Elections Act, 1996, as set out in the schedule to the bill, be amended by adding the following subsection:

"Minimum notice to clerk

"(5.1) Despite anything else in this act, the clerk is required to submit a question to the electors of his or her municipality only if a copy of the bylaw, resolution or order, as the case may be, and a copy of the proposed question are transmitted to the clerk,

"(a) in the case of a regular election, on or before nomination day;

"(b) in the case of a by-election, 60 or more days before voting day."

This, again, is a recommendation of the AMCTO. It allows the clerks to have some reasonable period of time to actually give them enough time in order to prepare the necessary questions that may go to the general electorate. The way the act is written right now, it's theoretically possible for somebody to come up with a question the day before an election and the clerk has to comply with that. We're saying that whatever questions are going to be posed at municipal election time should be known to the general public so that the clerks have the necessary time to prepare, at least 60 days prior to the election. There's no time limit in the act right now.

Mr Marchese: I actually would have liked to address Mr Hardeman first perhaps because —

Mr Hardeman: Mr Chair, could we set this one down and come back to it?

Mr Marchese: Agreed.

The Chair: Everyone's agreed? Section 8 shall be set down.

Are there any comments or amendments to sections 9 through 29? Seeing none, I'll put the question: Is it the favour of the committee that sections 9 through 29 carry? All those in favour? Contrary? Sections 9 through 29 are carried.

Section 30:

Mr Hardeman: I move that subsections 30(1) and (5) of the Municipal Elections Act, 1996, as set out in the

schedule to the bill, be struck out and the following substituted:

"Employee of municipality or local board

"(1) An employee of a municipality or local board is eligible to be a candidate for and to be elected as a member of the council or local board that is the employer if he or she takes an unpaid leave of absence beginning no later than nomination day and ending on voting day.

"Same

"(5) Subsection (4) also applies to an employee of a municipality or local board who by being elected to the council of another municipality or to another local board also becomes a member of the council or local board that is the employer."

This is, again, to clarify the fact that the need to resign or take an unpaid leave of absence applies only if one is running for the local board or the council in question and had been employed by that council or board, not an adjoining or neighbouring board. It's for clarification purposes.

Mr Maves: If I'm a CEO of a municipality and I run for an election and I win, can I serve as a CEO still and at municipal council? Do I have to take one or the other at that point in time?

Mr Gerretsen: I think as the CEO you get more money.

Mr Tascona: If the CEO takes the unpaid leave of absence, is his position held or is there a discretion there?

Mr Hardeman: If the CEO is elected, they have to resign their position.

The Chair: The question was, while he's on a leave of absence is his position to be held for him?

Mr Hardeman: Yes, if a CEO would take a leave of absence without pay to run in an election, he would go back if not elected.

Mr Tascona: But if he's elected, then any employee that's elected effectively resigns?

Mr Hardeman: Yes.

Mr Tascona: Is deemed to resign?

Mr Hardeman: They cannot take a leave of absence for the term of office. They have to resign upon being elected.

1740

The Chair: Any further discussion? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? That amendment is carried.

Any further amendments to section 30? Seeing none, is it the favour of the committee that section 30, as amended, carry? Contrary? Section 30, as amended, is carried.

Are there any amendments or comments to sections 31 or 32? Seeing none, I'll put the question. Is it the favour of the committee that sections 31 and 32 carry? All those in favour? Opposed? Sections 31 and 32 are carried.

Section 33: any amendments or comments?

Mr Hardeman: I move that clause 33(2)(b) of the Municipal Elections Act, 1996, as set out in the schedule to the bill, be struck out.

This section is the section which requires the 10 nominators for a nomination. It's one of the areas that the municipal clerks expressed a grave concern with, as they have to have the ability to accept or to reject a nomina-

tion. That nomination, under the new act, will be able to be delivered to the clerk any time after January 1 of an election year. There would be no voters' lists prepared in January, so the clerk would not be able to identify whether the 10 nominees were in fact legitimate. So, we felt it appropriate that we remove that requirement for the 10 nominees, recognizing that in the past the reason for the nominees was to eliminate frivolous candidates, and we are putting a deposit system in the bill, so it would really make the 10 nominators somewhat redundant.

Mr Lalonde: Anyone could deposit a nomination paper without having anybody to support his nomination?

Mr Hardeman: Yes.

Mr Gerretsen: I have some difficulty with that, quite frankly, because especially if you put your deposit at only \$100 — I know that's not set out in the act, but that's sort of the amount that's suggested — that somebody could run without having any nominators at all, I don't know.

Mr Marchese: This is serious.

Mr Gerretsen: I don't think you'll get rid of the frivolous candidates that way. The deposit fee isn't going to do it.

Mr Hardeman: After hearing the concerns of the municipal clerks and looking through past experiences, it would be very difficult to find even frivolous candidates who could not find 10 people who were willing to put their signature on the nomination papers. In the past, it has been assumed that people who signed nomination papers were somehow agreeing to also vote for the candidate. One could also go back and find nomination papers that were signed by the same nominators for quite a number of candidates for the same office. So the intent of the nominators has not been serving its purpose in the last number of years.

Mr Gerretsen: You're so persuasive, Mr Hardeman.

Mr Marchese: I support this, but not because of the explanation; because it makes sense. If a person running for office can't find 10 people to sign a nomination paper, they're in serious trouble, so I'm not quite sure that they would have gotten rid of nuisance candidates, really, because any nuisance candidate would find 10 people, it would seem to me. It's just an extra burden that one doesn't really need, so removing this is quite all right.

The Chair: Any further discussion? All those in favour of the amendment? Contrary? The amendment is carried.

Any further amendments to section 33? Seeing none, I'll put the question. Is it the favour of the committee that section 33, as amended, carry? All those in favour? Opposed? Section 33 is carried.

Section 34: any amendments or comments? Seeing none, I'll put the question. Is it the favour of the committee that section 34 carry? Those in favour? Opposed? Section 34 is carried.

Section 35: Mr Gerretsen?

Mr Gerretsen: We have an amendment here. I move that section 35 of the Municipal Elections Act, 1996, as set out in the schedule to the bill, be amended by adding the following subsection: It's (3.1) —

The Chair: Excuse me, you missed the word "guidelines."

Mr Gerretsen: I did?

The Chair: You've got to read it.

Mr Gerretsen: Okay.

"Guidelines

"(3.1) In deciding whether a person is qualified to be nominated and whether the nomination complies with this act, the clerk shall follow the prescribed guidelines."

This again comes from the AMCTO. They were concerned about the fact that they could be held accountable. They in effect are given too much discretion in this act, and they would like less discretion so that they in effect can't be held accountable.

Mr Marchese: Imagine that.

Mr Gerretsen: They don't want to see wide discretion. The clerks recommend that in order to complete his or her duties with minimal ambiguity or legal exposure a regulatory framework be established that would set out at least some of the conditions or situations requiring acceptance or rejection of the nomination papers. That's their position.

Mr Hardeman: We don't feel that this amendment is required in the act. I think the government feels that under the present legislation the clerks have that responsibility as it's outlined in the act now. The main input we had from the clerks and treasurers on this issue was based on that issue of the nominators, that they could not January 1 verify that was a legitimate nomination, because they wouldn't know whether the nomination paper —

Mr Gerretsen: They also don't want to have a lot of discretion either that somebody is a legitimate —

Mr Hardeman: No, but I believe, Mr Gerretsen, that is the only part of the discretion that has changed from the present act to the new act, that they've always had to make the decision whether it was legitimate.

Mr Gerretsen: Yes, but they don't even like the discretion they've got under the existing act.

Mr Hardeman: But I think it's important to recognize that part of being the chief electoral officer is that you have to make decisions, and this is one that I think —

Mr Gerretsen: You and I realize that —

Mr Hardeman: — no one else but the clerk is in the position to make that decision.

Mr Gerretsen: Well, I'm moving it anyway, because I'm with the clerks.

Mr Marchese: I thought the clerks made a good case. Although you point to the one example, that's one example of discretion that they have to deal with, but there were other concerns that they had around it which Mr Gerretsen was speaking to. I didn't think it was terribly unreasonable.

The regulations we would propose would include but not be limited to the following conditions that would authorize the rejection of nomination papers, such as: failure to file the necessary financial forms from the previous election; failure to file a proper or complete registration nomination form, which we were dealing with; failure to make any declaration deemed appropriate by the clerk; failure to provide personal identification to the reasonable satisfaction of the clerk upon request.

These were issues that they were raising that I think still apply to the act. If there is other comment from the

other policy people than the ministry legal staff, I wouldn't mind hearing from them.

Mr Hardeman: I think the issue is that the act will direct the qualifications for a candidate to be a legitimate candidate, such as having filed the appropriate papers and made the appropriate deposit. I think all the things that you suggested should be in regulations are in fact the requirements of the act.

Under the present legislation and under the proposed legislation, it will be the clerk who has to decide whether they have met the act, not to make judgements of whether the individual is a good or a bad candidate but whether they have met the requirements of the act.

Mr Marchese: I understand.

Mr Hardeman: For us to have a regulation to say "and the clerk must check these items in the act" seems somewhat redundant. I think most clerks are quite capable of going through the act to see what is required of a candidate and to see whether the candidate has met those requirements.

Mr Marchese: Mr Hardeman, I'm not sure we're dealing with our concerns. The clerks have this power, unfettered. They admit that is the case. They're worried about this unfettered discretion they've got. That's what they're speaking to. You're saying that's the power they've got. They're saying, "Yes, but we're frightened of this power we've got, because it leaves us liable."

If you continue to say that's the power they've got, it doesn't deal with the fact that they're worried about this power that is in the act. I'm not sure that it would be too overly cumbersome to try to deal with their concerns as they were suggesting. They were proposing a number of things that could go into guidelines that would be worked, by regulation presumably, with the ministry staff to deal with some of their concerns.

1750

I'm not sure why we wouldn't try to deal with those concerns that they have. They seem to me legitimate. They're not really partisan at all. These are clerks who are very worried about liability and how we protect them from that unfettered freedom they have to determine that discretionary power they have. It doesn't seem to me unreasonable to try to deal with their concerns. The question is, why aren't we trying to do that, given that this is an opportune moment to do so?

Mr Gerretsen: It's so nice to deal with a group that actually wants less power. Usually, it's the other way around.

Mr Marchese: If you want to stand it down to give you some time to reflect on —

Mr Hardeman: For clarification, if I could just read the notes I have here, subsection 33(2) sets out certain requirements for a nomination: "(a) be in prescribed form...consent to nomination and a declaration of qualification, both (be) signed," and the filing fee be paid. Subsection 29 provides that a person may be nominated only if they are qualified to hold office and they are not ineligible under any act to be nominated or hold office. Subsection 12(3) allows the clerk to request proof of qualifications. It is the ministry staff's opinion that the legislation is clear enough that regulation with guidelines would not add anything.

Mr Marchese: I see. What page is that on again, please? Do you have a page reference? Does somebody have a page reference?

Mr Hardeman: No, that is not a page; that is notes that were written down for me so I could make sure —

Mr Marchese: Subsection 32(2) is where in the act?

Mr Hardeman: That's the qualification to hold office.

The Chair: While Mr Marchese is doing that, is there any further discussion from any other members?

Mrs Barbara Fisher (Bruce): It appears to me like it's a redundant submission because in fact if the powers are already allocated to the election officer through the guidelines, no one there has to certify in fact that the person has to do their job. I don't think anybody is questioning whether or not they should do their job or whether or not the decision-making capacity is there. I think the guidelines state what the capacities are, and it's no more than saying, "Just do your job."

Mr Gerretsen: The clerks basically want as little discretion as possible so that they can be subject to as little criticism as possible. That's what it boils down to. They feel that if there were guidelines that set out the procedure, it would make their life a little easier. But I could understand the other argument that if you want to be a clerk, certain things come with the job, and certifying a nomination is one of them. That may leave you open to attack by some people. But why don't we do this for the clerks?

The Chair: We'll just see if Mr Marchese has any further comments. Any further discussion? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? That amendment is lost.

Any further amendments to section 35?

Mr Gerretsen: Yes, I have another amendment here, and that's an addition.

I move that section 35 of the Municipal Elections Act, 1996, as set out in the schedule to the bill, be amended by adding the following subsection:

"Protection from liability

"(6) No proceeding shall be commenced against the clerk in connection with a decision, made in good faith, to certify or reject a nomination."

This is much like the last argument that we went through. Basically, these people don't want to be sued or they don't want to be involved in actions by candidates who may, for one reason or another, be disqualified. They basically want a section in the act that states that if they've acted in good faith, they cannot be personally sued.

Mr Hardeman: I again think it's a redundant amendment. I think the clerk is obligated to do certain functions. There is a statutory authority that a clerk has; one of them is to be chief electoral officer for the elections. I think if they do make errors in judgement, that's why municipalities make sure they carry insurance to cover such eventualities.

I don't think the other areas of the act that point out the statutory authority or the statutory requirements of the clerk include the fact that if you do it wrong, you can't be held liable, so I think that would be an inappropriate amendment.

Mr Ted Chudleigh (Halton North): Are you suggesting that the clerk be held harmless or the municipality be held harmless?

Mr Gerretsen: The clerk.

Mr Chudleigh: The clerk personally?

Mr Gerretsen: Because the clerk makes the decision as to whether or not the nomination is valid, initially. If they act in good faith, they shouldn't be held —

The Chair: Any further discussion? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? That amendment is lost.

Mr Gerretsen: You guys will never be guest speakers at the clerks' conference.

The Chair: Any further amendments to section 35? Seeing none, I'll put the question. Is it the favour of the committee that section 35 carry? All those in favour? Opposed? Section 35 is carried.

Are there any comments or amendments to sections 36 through 65? Seeing none, I'll put the question. Is it the favour of the committee that sections 36 through 65 carry? All those in favour? Opposed? Sections 36 through 65 are carried.

Section 66:

Mr Hardeman: I move that section 66 of the Municipal Elections Act, 1996, as set out in the schedule to the bill, be amended by adding the following subsection:

"No penalty

"(4) No employer shall impose any penalty on an employee who refuses to provide services voluntarily as described in subparagraph ii of paragraph 2 of subsection (2)."

This is just to clarify that no employee can be penalized for not volunteering their time to work on behalf of a candidate in an election.

Mr Marchese: Hear, hear.

Mr Hardeman: Hear, hear. Everyone should do that voluntarily.

Mr Tascona: Just for the record, when you say "penalty," what are you getting at? Are you getting at no monetary penalty, any discipline, anything affecting him in the employment relationship?

Mr Hardeman: Yes. As an example, if an employer was to ask an employee or to have an employee go out and campaign and help in a campaign and the employee was not prepared to do that, the employer could not say, "Well, if you won't campaign, then we don't need you today." They could not be penalized in their regular work for not being willing to work on behalf of —

Mr Tascona: So it would cover monetary measures and disciplinary action.

Mr Hardeman: I think it would be both, yes.

The Chair: Any further discussion?

Mr Jack Carroll (Chatham-Kent): Mr Marchese would like to give the government a third accolade here.

Mr Marchese: Oh, no. I'm just agreeing.

Mr Hardeman: That's close enough.

Mr Marchese: Mr Hardeman was quite clear.

The Chair: Any further discussion? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? That amendment is carried.

Further amendments to section 66? Seeing none, I'll put the question. All those in favour that section 66 carry? Opposed? Section 66, as amended, is carried.

Are there any comments or suggestions on sections 67 through 70? Seeing none, I'll put the question. Is it the favour of the committee that sections 67 through 70 carry? All those in favour? Opposed? Sections 67 through 70 are carried.

Section 71:

Mr Hardeman: I move that subsection 71(3) of the Municipal Elections Act, 1996, as set out in the schedule to the bill, be struck out.

Mr Marchese: After Mr Hardeman speaks, I want to speak. This is a bad one. Read the note at the bottom; this is a bad one.

Mr Gerretsen: You've gone too far this time.

Mr Hardeman: No comment, Mr Chair.

Mr Marchese: It's quite clear. This is wiping out the \$5,000 limit regarding the total contribution a person can make. Obviously, individually they can contribute up to \$750 to any individual campaign and that company, conglomerate or whatever it is can then give out \$750 to any other campaign up to \$5,000. That's a lot of money. Most of us ordinary folk, or many of you who might have run municipally — if you have the connections to those types of people, you might be able to get some of their money, but some of us don't get that kind of money. Some of us don't want that kind of contribution from those companies, in fact.

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But what this does is to say that a company can decide that they've got \$10,000 or \$20,000 to give away and they want to spread their largess across the city of Toronto or Metropolitan Toronto or Hamilton, wherever they want to go. That's a lot of money to give away to influence those municipal politicians, because that's how you influence people: through your ability to give money to their campaigns.

I don't know where this amendment comes from. I don't know who's encouraged this committee's members to support this, but it comes out of the blue. We never had any inkling from anybody that this was going to come up as a matter that was going to be an amendment here. I find it objectionable. There's an answer to — we're striking it out?

Interjection: No, no.

Mr Marchese: Oh. Mr Hardeman?

The Chair: Mr Gerretsen first, but Mr Hardeman does have a response.

Mr Gerretsen: I'd like to hear from him as well. Is Mr Hardeman suggesting that the government believes that councils can be bought? Because that's what he's suggesting by striking out this section. I mean, if you can give any candidate as much as they want, you can give up to \$750 to every candidate who's running, you could buy a council. Is the government in favour of councils being bought this way?

Mr Hardeman: Definitely not, Mr Gerretsen.

Mr Gerretsen: Then why are you voting in favour of having this removed?

Mr Hardeman: First of all, I apologize for saying I had no comment on it, because it seemed like a very simple resolution.

One of the reasons we are recommending the removal of the \$5,000 — the act presently says that an individual can contribute a maximum of \$750 per candidate, with no

more than \$5,000 per council. There are a great number of councils where that would include every member of council at \$750. It was thought, as we're looking at reorganizing government and local government, that there may very well be much larger councils, and an upper limit on how much could totally be contributed to individual councils was deemed inappropriate and unfair to some councils as opposed to others. If a council in Kingston has five members, anyone can contribute \$750 to every member on council or whatever number they wish to contribute to. If another council has 56 members, they are prohibited from contributing any more than the up to \$5,000 total. So we think it's appropriate to leave that, to take the ceiling off but leave it on as \$750 per candidate.

Mr Carroll: It is well to point out here that the individual limit is still only \$750, and I think to say that any individual could be bought for 750 bucks is really pushing credibility. If a council is in a position to have all of its members supported at \$750, then why shouldn't every council be in a position to have all of its members supported at \$750? I think you eliminate some people from that kind of support with the \$5,000 limit. This way, we make it available that every member who runs can get \$750 from the same contributor if in fact they are worthy of it. So I think we have to keep in mind that it is still \$750 per candidate, and that is what eliminates any possibility of somebody being bought.

Mr Marchese: I'm not sure Mr Hardeman is correct in saying that there's a \$5,000 limit per council. I think there's a \$5,000 limit as total contribution.

Mr Hardeman: No, no.

Mr Marchese: Per jurisdiction? Per council? It's even worse. That's even worse.

Mr Hardeman: For correction purposes, the act presently says \$5,000 maximum —

Mr Marchese: Per council. Yes, that's even worse. If I was correct in my previous interpretation, that was bad enough, but this — somebody can give up to whatever amount. It could be higher, and of course it can be for every council, wherever they have dealings with those people. I just think this is obscene; I really do. I believe that's a lot of money that can be made to those individuals and that is influence. Whether you say "bought" or not, however you want to word it, for me that is a great deal of public influence on those individuals. I really find that objectionable.

I think \$5,000 is already a great deal. Whether council is made up of 20 or 10, you are making a sizeable contribution to those individuals. I would find it strange that such a company would make a contribution to all of them. Maybe that happens; I'm not sure. But even if they make a contribution to all the politicians, as opposed to selective contributions to some, that's a lot of bucks. I find this objectionably obscene. I want to say that for the record. I'll be voting against it and I want a recorded vote when we do this.

Mr Gerretsen: Just as a matter of clarification to Mr Carroll, I never said individual members can be bought. I said councils can be bought this way, which is a little bit different.

The Chair: Thank you, Mr Gerretsen. Any further discussion? Seeing none, and Mr Marchese has requested a recorded vote, all those in favour of the amendment?

Clerk of the Committee: Mr Baird, Mr Carroll, Mr Chudleigh, Ms Fisher, Mr Hardeman, Mr Maves, Mr Ouellette, Mr Tascona.

The Chair: All those opposed?

Interjections.

The Chair: We are voting for the amendment to the schedule that was —

Mr Hardeman: I made a motion that I move that subsection 71(3) of the Municipal Elections Act, 1996, as set out in the schedule to the bill, be struck out, and that's what I voted in favour of.

Interjections.

The Chair: Mr Gerretsen, that's an entire section, not a subsection. You can't delete an entire section to a bill.

Mr Gerretsen: You guys have got answers to everything. I want to be recorded as opposed, then.

The Chair: Thank you. We were at that stage in the vote. All those opposed?

Mr Maves: Mr Chair, we have a question.

The Chair: No, we're in the middle of a vote. We don't have a question.

Clerk of the Committee: Mr Gerretsen, Mr Hoy, Mr Lalonde, Mr Marchese.

Mr Maves: I didn't vote, and the reason I didn't vote was because I wanted to find out — I'm not sure if it was in order.

The Chair: The motion is in order.

Mr Maves: So the motion to withdraw that section from the bill is in order and that's what we're voting on?

The Chair: The subsection. You can withdraw a subsection from a bill. Yes, it is in order.

Mr Maves: Did they have —

The Chair: You were recorded as voting in favour when the clerk read out the names.

Mr Maves: Without putting up my hand.

Mr Marchese: See the assumption Steve made.

Mr Maves: Was that the wink in my eye?

The Chair: Moving right along, are there any further amendments to section 71?

Mr Hardeman: I move that subsection 71(4) of the Municipal Elections Act, 1996, as set out in the schedule to the bill, be amended by striking out "subsections (1), (2) and (3)" in the first line and substituting "subsections (1) and (2)."

Mr Marchese: What does that do, Mr Hardeman?

Mr Hardeman: This is to amend subsection 71(4) to delete references to subsection 71(3), which is no longer included in the bill as a result of the previous vote.

Mr Marchese: Terrible amendment.

The Chair: Further discussion? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? That amendment is carried.

Is it the favour of the committee that section 71, as amended, carry? All those in favour? Opposed? Section 71 as amended is carried.

Are there any comments or amendments to sections 72 through 75? Seeing none, I'll put the question. Is it the favour of the committee that sections 72 through 75 carry? Opposed? Sections 72 through 75 are carried.

Section 76:

Mr Hardeman: I move that subsection 76(4) of the Municipal Elections Act, 1996, as set out in the schedule to the bill, be struck out and the following substituted:

"Maximum amount

"(4) During the period that begins on the day a candidate is nominated under section 33 and ends on voting day, his or her expenses shall not exceed an amount calculated in accordance with the prescribed formula."

This is an amendment to move the allowable election expense to regulation as opposed to legislation.

Mr Marchese: I'm worried about this. I'm not sure why we're doing it. There's probably an explanation, no doubt, but it obviously wipes out the spending limits and gives authority now to do this under regulation. I'm worried about the implication of it because my sense is that we might be allowing, under regulation, to increase the amounts that people could spend. You might relieve me of that fear, which would be good, but I am worried about what is happening under this kind of proposition here. Perhaps, Mr Hardeman, you might want to comment on that. I don't know if staff have any explanation with respect to this.

Mr Hardeman: We think that the system needs to be changed because of the change in the voters' list and the nomination period being eight months as opposed to 28 days. The voters' list that will be in place at the actual time of the election could very likely be smaller than the voters' list that included transient people, both those who moved in and who moved out.

Mr Marchese: But the population would remain the same. I mean, how would the electorate decrease?

Mr Hardeman: In an area where we have a large tenant population, the tenant moving out may very well not be removed from the voters' list when the tenant moving in has been added on. They walk in and add themselves on to the voters' list. The old ones are not removed so the voters' list would tend to be larger until it was actually calculated. To make sure that can be adjusted over the period of time, we deem it appropriate that we should do it in regulation.

The Chair: The committee will stand recessed until immediately after the vote in the House.

The committee recessed from 1811 to 1821.

The Chair: We were in the middle of discussing an amendment to section 76. Were there any further questions arising from that?

Mr Marchese: You are anticipating possibly reducing the spending limits because there will be fewer people enumerated, is what I understood. Is that is likely to happen then?

Mr Hardeman: Could you try that again, Rosario?

Mr Marchese: I think part of what you were saying is that you're anticipating fewer people to be enumerated and because that is likely to be the case, possibly we may have to adjust the ceilings. Is that correct? So the ceiling isn't likely to go down. The spending limits therefore are likely to go down more than up?

Mr Hardeman: I'm not sure that the legislation deals with whether it's going up or down. The spending limits should be set by regulation instead of legislation so they can be varied over time.

Mr Marchese: I understand that. If we could just get one of the other folks there to —

Mr Jones: It's been argued that with changes to the way that enumeration can be done in future we may step

away from a list that is today very inclusionary. It actually has more names on it than there probably are entitled to be there. If we tighten up that enumeration process and the list ends up being more exact in terms of who's entitled, you want to have the ability to be able to maintain the spending limits by being able to change the formula to account for the fact that there's a shorter voters' list than there is now.

Mr Marchese: But I thought that was automatic. I thought that the spending limit is tied to the numbers of people enumerated or on the voters' list.

Mr Jones: That's right.

Mr Marchese: So once we know that, the ceiling is tied to that. Why do we need this in order to get to that?

Mr Jones: But if you have a voters' list that errs on the side of including people, as we have today, then you have a spending limit that's a certain amount. If the list ends up having fewer people on it because you're more exact in your enumeration and you think it's appropriate that the spending limit stay relatively the same, then you want to adjust the formula to take that into account.

The Chair: Any further discussion?

Mr Ouellette: Why are we changing the legislation to call for inadequate election lists?

Mr Hardeman: I would point out that the legislation also deals with providing the opportunity to come up with new types of voters' lists, that they will not all be done as they presently are, and as the numbers change it may be appropriate to change the spending per capita. Presently, the spending is based on so many dollars for the office and then so much per capita of your electorate, and over time it may be appropriate to change that. Our proposal is to do that by regulation as opposed to having to change the legislation to change the 25 cents or whatever the number is per capita that one can spend on an election campaign.

Mr Gerretsen: It seems the member for Oshawa is having second thoughts about this bill.

The Chair: We will find out soon enough, Mr Gerretsen.

Seeing no further discussion, I'll put the question. All those in favour of the amendment? Contrary? The amendment is carried. Is it the favour of the committee that section 76, as amended, carry? All in favour? Contrary? Section 76, as amended, is carried.

Are there any comments or amendments to sections 77 or 78? Seeing none, I'll put the question. Is it the favour of the committee that sections 77 and 78 carry? Contrary? Sections 77 and 78 are carried.

Section 79: any comments or amendments?

Mr Gerretsen: We have an amendment, and it's basically an addition of subsection (8.1). I move that section 79 of the Municipal Act, 1996, as set out in the schedule of the bill, be amended by adding the following subsection:

"Restructuring

"(8.1) Subsection (8) also applies with necessary modifications if,

"(a) the municipality has been restructured since the last regular election; and

"(b) the candidate is nominated for an office on a council or local board whose territorial jurisdiction is the

same as or overlaps that of the former council or local board."

It's basically intended to deal with the situation where you've got an amalgamation or a restructuring, that at least the funds that were there before, that were put in trust for his candidacy before, should still be made available to him.

Mr Hardeman: I would suggest that further along in the government's amendments we have an amendment that deals with the situation of restructuring and the minister's power to provide regulations to deal with the one time.

Mr Gerretsen: Which amendment, 95.1? If that covers the situation, I'd be prepared to withdraw this amendment.

The Chair: Thank you. Mr Gerretsen has withdrawn his amendment.

Any further amendments to section 79? Seeing none, I'll put the question. Is it the favour of the committee that section 79 carries? Opposed? Section 79 is carried.

Are there any amendments or comments for sections 80 through 87? Seeing none, I'll put the question. Is it the favour of the committee that sections 80 through 87 carry? All in favour? Opposed? Sections 80 through 87 are carried.

Section 88: any comments or amendments?

Mr Hardeman: I move that subsection 88(11) of the Municipal Elections Act, 1996, as set out in the schedule to the bill, be struck out and the following substituted:

"Voters' list

"(11) A voters' list prepared under this act shall not be,

"(a) posted in a public place; or

"(b) made available to the public in another manner that is prescribed."

This amendment is to deal with the privacy commissioner's concern about it being posted on the Internet, which would be the same as putting it in a public place. We are covering that concern by this amendment.

The Chair: I believe that might be a typo, Mr Hardeman. "Than is prescribed" as opposed to "that is prescribed" would be grammatical.

1830

Mr Hardeman: I stand to be corrected. I believe it's an appropriate comment, that other manners in which they may not be posted will be prescribed. The minister may, by regulation, prescribe that it cannot be posted on the Internet.

Mr Marchese: The phrasing could have been improved, I think is what you're getting at.

Mr Tascona: The intent is that it's made available to the public in the manner that is prescribed.

Mr Hardeman: No, I think the intent of the amendment is that the minister will not prescribe how it may be posted; he will prescribe how it may not be posted. One of those would be the Internet, but there may be others. He may prescribe how lists cannot be posted.

"A voters' list prepared under this act shall not be... made available to the public in another manner that is prescribed." By regulation, the minister could prescribe that it can't be posted on the Internet, it cannot be put over the television, it cannot be made available on local computer networks. He may prescribe how it may not be

made available, but the municipality or the electoral officer would be able to make it available in any manner which is not prohibited.

Mrs Fisher: I'm not disagreeing with the intent of what you're trying to say. Given that eight out of eight people sitting at the table are confused by it, is now not the time to correct it, to put in language that somebody can understand?

Mr Gerretsen: The government should withdraw this bill and get their act together.

Mrs Fisher: Oh, John, settle down. All I'm trying to suggest is that if eight out of eight are confused by it, this is the time to get it right, not to get it wrong. There must be a way of wording it that makes it right on.

Mr Gray: The intent is that the list not be "made available to the public in any other manner that's prohibited by regulation." If you want to get more precise, we could do something like that. You could say you can't make it available if it's prohibited by regulation, that kind of language. I think this says it.

Mr Gerretsen: It raises all sorts of other questions, though. Can it be made available? Does that mean somebody could go into the clerk's office and just look at it? Can a person in effect make a copy of it and take it out of the office with them?

Mr Gray: Yes.

Mr Gerretsen: If you do that, how is that going to protect the public any more than when it was posted on the telephone poles?

Mr Hardeman: I think it's important to recognize that the intent of the amendment was not to prohibit people from knowing who is on the list of electors. It was to make it less public and thus make it safer for the people on the list. It was to prohibit the posting in public places, on telephone poles, in the local service station and so forth. Upon reviewing that, there was concern expressed that with modern technology there were ways it could be publicly posted other than the hydro poles. This is to prevent that from happening, but not to limit the ability of a voters' list to be public. They are public lists.

Mr Maves: I think Mr Tascona's basic point is that there's going to be one way in which the voters' list is going to be made available, and you're saying you want to prescribe a thousand different ways it can't be made available. Wouldn't it be easier just to prescribe the one way it's made available? Then you'd just put in here "than as prescribed," change the "that" to "than." You wouldn't have to do a list of all these different ways that it couldn't be made available, just one way it could be made available. Isn't that the easier way to go about it?

Mr Hardeman: I think the concern was that there may be a number of ways in which it can be made available.

Mr Maves: But less than can't be made available.

Mr Hardeman: I think the intent of the legislation is fairly simple. It is trying to eliminate the public posting, whether that be on the traditional hydro pole or by electronic means. It's to eliminate the public posting. Any other way of circulating the list is still appropriate.

Mr Marchese: If I didn't know any better, I would think the government members are filibustering.

On a serious note, this is actually quite simple. I think it could have been improved grammatically, but it says,

"shall not be...made available to the public in another manner," and I think the intent of what follows is "yet to be prescribed by regulation" or "to be prescribed by regulation." I'm not sure whether the lawyer, Mr Gray, has any other wording change to make it easier. If he doesn't, I suggest we move on, because it's quite clear.

Mr Gray: This can be said in many different ways. I think this language works. You people can come up with something that you're more comfortable with: "which may be prohibited by regulation," someone's suggesting, "any other manner which is prohibited by regulation."

Mr Marchese: That's even worse. Leave it alone. Mr Chair, I'm ready to vote on this.

Mr Baird: Many women particularly didn't want the fact that they were the only person in a household over the age of 18 posted on a street pole. It was brought forward by Mr McGuinty, and I believe it passed second reading. It was brought forward for that reason, and I voted for it at second reading because I think people had just cause. Some of these voters' lists were not only were posted on telephone poles months after the election, but in a windstorm they were flying around the street. People had just reason not to want the information to be that available, but if someone wanted to look for it with specific intent to do so, that would be a good idea.

Mr Marchese: Nobody is disputing the intent of what's here. A lot of people were very concerned about their names being made public, and I agree with that. But (a) and (b) cover both what we are familiar with and what we don't know, that has to be worked out by regulation. Internet is an example of that, and there might be other examples they want to work out. We agree with this.

Mr Tascona: If it was the desire of the committee to change the word "that" to "than," what would be the procedure?

Mr Hardeman: I suggest that would again put the onus on the minister prescribing any way that it may be posted, when the intent of the amendment is strictly to allow the minister, by regulation, to prohibit some of the ways that it may be circulated. Your suggestion would be the other way. He would have to prescribe all the ways that it could be circulated.

The Chair: Is there any new discussion? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? The amendment is carried.

Shall section 88, as amended, carry? All those in favour? Opposed? Section 88, as amended, is carried.

Are there any amendments or suggestions to sections 89 through 94? Seeing none, I'll put the question. Is it the favour of the committee that sections 89 through 94 carry? Opposed? Sections 89 through 94 carry.

Section 95: I should inform Mr Gerretsen that because your motion dealt with 35(3.1), which was defeated, that motion would not be in order.

Mr Gerretsen: You know how to hurt a guy, don't you?

The Chair: Mr Hardeman, I believe you have an amendment.

1840

Mr Hardeman: I move that subsection 95(1) of the Municipal Elections Act, 1996, as set out in the schedule to the bill, be amended by adding the following clause:

"(e.1) prescribing a formula for the purpose of subsection 76(4) (maximum amount of expenses)."

This is a companion resolution to the previous one where we took the election expenses out of the act. This gives the minister the authority to pass regulations to set those expenses.

The Chair: Any discussion?

Mr Marchese: I'm just worried about that.

The Chair: Further discussion? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? The amendment is carried.

Mr Hardeman: I move that section 95 of the Municipal Elections Act, 1996, as set out in the schedule to the bill, be amended by adding the following subsection:

"Different formulas

"(3) Under clause (1)(e.1), a different formula may be prescribed for candidates for the office of head of council of a municipality than is prescribed for candidates for other offices."

Again this is a companion resolution to allow the minister, by regulation, to set different standards for different offices, that the head of council could get different election expenses than the other members of council.

Mr Marchese: I just want to make a note here that "than" appears in this change, in the last sentence, you will observe. I'd just bring your attention to that.

The Chair: Thank you, Mr Marchese. Further discussion? Seeing none, all those in favour of the amendment? Opposed? The amendment is carried.

Is it the favour of the committee that section 95, as amended, carry? All those in favour? Opposed? Section 95, as amended, carries.

Mr Hardeman, you have another addition?

Mr Hardeman: Yes. I move that the Municipal Elections Act, 1996, as set out in the schedule to the bill, be amended by adding the following section:

"Transitional regulations, municipal restructuring

"95.1(1) The minister may, by regulation, provide for transitional matters that affect an election and arise out of the restructuring of a municipality or local board.

"Same

"(2) A regulation made under subsection (1) may be made retroactive,

"(a) in the case of a regular election, to January 1 in that year;

"(b) in the case of a by-election, to the first day of the period described in paragraph 2 of subsection 65(4).

"Same

"(3) A regulation made under subsection (1) may be particular or general in its application.

"Same

"(4) A regulation made under subsection (1) applies despite anything else in this or any other public or private act."

This allows the minister, by regulation, to deal with the other matters that were previously discussed as they relate to restructuring and elections in the election year.

The Chair: Any discussion? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? Mr Hardeman's amendment is carried.

Section 96: Are there any amendments? Seeing none, I'll put the question. Is it the favour of the committee that

section 96 carry? All in favour? Opposed? Section 96 is carried.

Shall the entire schedule, as amended, carry?

Mr Gerretsen: Mr Chair, there is still that one section that was set aside.

The Chair: Forgive me. Thank you, Mr Gerretsen. I appreciate your reminding me. We set down subsection 8(5.1). I believe Mr Hardeman was getting some more background information.

Mr Hardeman: I'm not sure I have much background information. The concern was that this amendment is specifying a time by which questions for the ballot must be given to the clerk before they could be on the ballot. I'm informed that the present legislation does not require such time frames. If it's not in sufficient time, it would not be on the ballot. It would behoove everyone to have it in sufficient time so the municipality can pass a bylaw to put it on the ballot. If the municipality does not pass a bylaw to include it on the ballot, it doesn't go on the ballot and it would have to wait till the next municipal election.

Mr Gerretsen: What is sufficient time, though? Nomination day is the day when the ballot for every position in the municipality is set. People know who's running for what and they can print the ballots. All we're suggesting with this amendment, and it's an Association of Municipal Clerks and Treasurers of Ontario recommendation, is that the same thing applies to a question; in other words, that nomination day be the last day on which a question can be put to be voted on at election time. If you have a special election, then it should be 60 or more days before voting. We're making it easier on the clerks so that they know what to prepare for. Just because it isn't in the present act — it may be an oversight in the present act.

Mr Jones: One of the things that has to be kept in mind here is that at a by-election, if you're going to have a special election for the purposes of putting a vote to the electorate, it's only triggered by somebody — a school board or a public utility or a council — putting the question to a vote and then advising the clerk to hold the election. The trigger is already there, so the suggestion that you need one that says in the case of a by-election 60 or more days before voting day, that's already in the legislation, in the section dealing with the calling of a by-election.

Mr Gerretsen: You've got me on that one, but it still doesn't say anything in the act, and I think the parliamentary assistant has just confirmed it, there's nothing in the act that states that a question to be posed to the general public on the regular election day has to be in to that clerk by a certain date. It's theoretically possible for a question to be put even a week before voting day.

Mr Jones: No, it's not practically, administratively or theoretically possible, because the law requires notice to be given to the public. There are certain administrative things that a clerk has to do to prepare a ballot. A week before the election, you're already going to be into advance polls. You're going to have some people —

Mr Marchese: All the clerks are wrong?

Mr Gerretsen: Have you discussed this with the clerks? That's all I want to know.

Mr Jones: Yes.

Mr Gerretsen: And were you able to convince them?

Mr Jones: Well, obviously not. I'm trying to convince you now.

Mr Gerretsen: I think the clerks make eminent good sense. We all know that it's the clerks who really run the municipalities and determine whether a municipality is properly run. If they put this forward —

Mr Jones: And determine what's the appropriate day by which to have your question to the clerk for the purpose of it being included as part of the regular election.

Mr Gerretsen: But the clerks don't want that kind of open-ended responsibility. They'd much rather have it tied down in legislation, that it says it can be no later than nomination day.

Mr Marchese: I was convinced by some of the arguments the clerks seemed to be making; their interpretation seemed to be valid, from my obviously limited knowledge of this. But you're saying it is already within the act, that they have protections that will give them plenty of time to be able to administratively deal with a referendum question that could be placed. You're saying that in the act they are protected from the worries they seem to have. So where is the reading or misreading of this? How does it happen that they have one interpretation as municipal clerks, who seem to have a great deal of experience, and that we, through you, have a different knowledge of this? Where's the misinterpretation that's occurring here?

1850

Mr Jones: I don't think it's a matter of misinterpretation. It's how fixed do you want the legislation to be? Do you want to be able to say that September 1 is the day?

Mr Gerretsen: Nomination day.

Mr Jones: But maybe nomination day is an inappropriate day in certain municipalities.

Mr Gerretsen: Why?

Mr Jones: Why? Because of the lead time for doing certain things. If you have to give notice to the public of the fact that you're going to put a question on the ballot and you're going to have your advance polls starting, say, three or four days after nominations are closed and you're going to run a continuous poll for 22 days, then nomination day may in fact be too late.

Mr Marchese: You're saying protections are already there.

Mr Jones: The clerk has a lot of decision-making power in this new act when it comes to administrative things. The clerk can say, "I need to know by this date in order to manage and run this election."

Mr Marchese: So he or she cannot be totally surprised by a council, which could surprise the clerk through some vote that might occur around referendum.

Mr Jones: The council could ask the clerk, but the clerk would be within his or her right to indicate that administratively they could not accommodate this request.

Mr Marchese: I guess the fear is that the clerk may not be asked. Council may make the decision — is that possible?

Mr Jones: You have to ask the clerk. The clerk has to prepare the ballot. The clerk has to make the necessary —

Mr Marchese: So in dealing with such a motion, the clerk would know of the motion, obviously, and would be there to respond.

Mr Jones: True, and a council 99 times out of 100 would ask the clerk in advance, "What's the last day that we can possibly put this question?"

Mr Marchese: And they listen to the clerk, of course.

Mr Jones: On election matters, yes.

Mr Gerretsen: But there's also another scenario, and that is the fact that the clerk may very well, for whatever reason, not want to deal with a specific question because it means more paperwork, more ballots etc. Under your scenario, a clerk could three or four months before the election say, "We can't deal with that question," particularly if it's a referendum that's being asked for by a group of citizens.

It's much better to set it out in precise legislation in exactly the same way. On nomination day we know exactly who the candidates are going to be and the question should be there on nomination day.

Mr Carroll: I just want to pose this question to the parliamentary assistant. We've had a couple of instances now where the clerks, through their association, are asking for less responsibility. As I understand the municipal structure, the clerks are fairly senior officers in the whole municipal structure. Have you any idea why they would be asking for less responsibility and less authority?

Mr Gerretsen: Come on. That's too political a question.

Mr Hardeman: Mr Carroll, I have absolutely no idea why an organization such as the association of clerks would be concerned about having more responsibility. I'm sure they are quite capable of making these types of decisions; they have in the past and they will in the future, I think.

Mr Gerretsen: I can give you a reason: The clerks don't want to get involved in the political jockeying that goes on in municipalities and they don't want to get caught in between two potential candidates — they may have to work for one of them somewhere down the line — if somebody raises a technicality or whatever. They would like to have it prescribed as detailed as possible so that nobody can accuse them later on of perhaps taking sides in an election.

Mr Marchese: It's not political at all. These clerks have made a recommendation that supports this government with respect to removing that \$5,000 ceiling. I wondered: "Why would they do that? It's a highly political thing. Why would they get involved in stuff like that?" To be fair, they obviously have a number of concerns they wanted to raise — not political, obviously.

Mr Hardeman: I just want to make one comment on the issue of setting a deadline or a certain date. It's important to recognize that putting a question on the ballot, with giving public notice and making sure all the information is available, may take longer than from nomination day to the time the clerk is instructed to print the ballot. The government's suggestion is that it's more appropriate for them to set the time lines as to how soon it must be in to be included in this year's ballot.

Mr Marchese: I'm ready for the vote.

The Chair: Thank you. Seeing no further discussion, I'll put the question. All those in favour of Mr Gerretsen's amendment?

Mr Gerretsen: I'd like a recorded vote.

Ayes

Gerretsen, Hoy.

Nays

Baird, Carroll, Chudleigh, Fisher, Hardeman, Marchese, Maves, Ouellette, Tascona.

The Chair: That amendment is lost.

Shall section 8 carry? Section 8 is carried.

Shall the schedule, as amended, carry? Carried.

Shall the title of the act carry? Carried.

Shall the bill, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Carried.

That concludes our clause-by-clause deliberation on Bill 86. Thank you to the committee — record time.

Mr Marchese: Mr Chair, I think it should noted that we've been very cooperative.

The Chair: I would be pleased to note that for the record. This committee stands adjourned till the call of the Chair.

The committee adjourned at 1856.

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Vice-Chair / Vice-Président: Mrs Barbara Fisher (Bruce PC)

*Mr John R. Baird (Nepean PC)

*Mr Jack Carroll (Chatham-Kent PC)

Mr David Christopherson (Hamilton Centre / -Centre ND)

*Mr Ted Chudleigh (Halton North / -Nord PC)

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*Mrs Barbara Fisher (Bruce PC)

*Mr Steve Gilchrist (Scarborough East / -Est PC)

*Mr Pat Hoy (Essex-Kent L)

*Mr Jean-Marc Lalonde (Prescott and Russell / Prescott et Russell L)

*Mr Bart Maves (Niagara Falls PC)

Mr Bill Murdoch (Grey-Owen Sound PC)

*Mr Jerry J. Ouellette (Oshawa PC)

*Mr Joseph N. Tascona (Simcoe Centre PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mr John Gerretsen (Kingston and The Islands / Kingston et Les îles L) for Mr Duncan

Mr Ernie Hardeman (Oxford PC) for Mr Murdoch

Mr Rosario Marchese (Fort York ND) for Mr Christopherson

Also taking part / Autres participants et participantes:

Mr Paul Jones, manager, local government policy branch, HOU

Mr Tom Melville, counsel, municipal and planning law, HOU

Mr Scott Gray, counsel, municipal and planning law, HOU

Clerk / Greffier: Mr Todd Decker

Staff / Personnel: Ms Cornelia Schuh, legislative counsel

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Assemblée législative de l'Ontario

Première session, 36^e législature

Official Report of Debates (Hansard)

Wednesday 29 January 1997

Journal des débats (Hansard)

Mercredi 29 janvier 1997

**Standing committee on
resources development**

**Comité permanent du
développement des ressources**

Organization

Organisation



Chair: Brenda Elliott
Clerk: Todd Decker

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENT

Wednesday 29 January 1997

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Mercredi 29 janvier 1997

The committee met at 1535 in committee room 1.

ELECTION OF CHAIR

Clerk of the Committee (Todd Decker): Honourable members, as a result of a motion in the House which adjusted the membership of this committee the position of Chair is now vacant. It is therefore my duty to call upon you to elect one of your own as Chair of the committee. Are there any nominations? Mr O'Toole.

Mr John O'Toole (Durham East): I nominate Brenda Elliott as Chair.

Clerk of the Committee: Mr O'Toole has nominated Mrs Elliott. Are there any further nominations?

Mr Doug Galt (Northumberland): I am pleased to second the nomination.

Clerk of the Committee: Are there any further nominations? Seeing none, I'll declare nominations closed and Ms Elliott duly elected Chair of the committee.

The Chair (Mrs Brenda Elliott): Thank you all. It's my pleasure to be your Chair and I will endeavour to be as wise and fair as I can be in this position.

SUBCOMMITTEE BUSINESS

The Chair: The next order of business: Is there a motion to appoint a subcommittee on committee business?

Mrs Barbara Fisher (Bruce): I move that Mr Hoy be a substitute for Mr Duncan as the official opposition's representative on the subcommittee on committee business.

The Chair: Does anyone wish to speak to this motion? All in favour? Contrary, if any? I declare this motion carried.

Is there any further business? Is it the wish of the committee to have a short subcommittee meeting after this meeting to iron out any difficulties or concerns?

Mr David Christopherson (Hamilton Centre): I can't. I have to go right away. I would be pleased to attend a meeting but we would have to set another time.

The Chair: All right. Perhaps then the wisest would be to end the meeting and hold another meeting as required when legislation is brought towards our committee.

Mr Ted Chudleigh (Halton North): What a great start.

Mr O'Toole: A great start.

The Chair: A motion?

Mr Galt: Is there anything we're anticipating coming to this committee down the road? Any feelings or direction or thoughts?

The Chair: Mr Decker, we seek your advice.

Clerk of the Committee: There has been speculation that Bill 99, the workers' compensation amendment act, when it receives second reading may come to the committee. That's probably the most likely prospect at this moment.

Mr Galt: That's probably after all the bills that are in the House at the present time?

Clerk of the Committee: In all likelihood, yes. Mr Christopherson may know.

Mr Christopherson: No, but on a different matter, I just wanted to go on record as saying that I found the tenure of Mr Gilchrist, who has just left as Chair of the committee, to have been one bound in a high degree of fairness and balance. I didn't always agree with him, particularly during some of the sessions with the public present, some of the rulings he made. But I want definitely to go on record as saying that the vast majority of the time, particularly in the subcommittee when we were working out the rules of engagement, if you will, for the committee, I found him very fair and very even-handed. I, for one, as one member of the House, would like the Hansard record to reflect that.

Mr Pat Hoy (Essex-Kent): Madam Chair, there was a request for a subcommittee meeting made in early January. I wonder if we could have that subcommittee meeting on Monday of next week.

The Chair: We can endeavour to put a time together for that.

Mr Christopherson, I just would like to thank you, on behalf of Mr Gilchrist, and I will make sure he receives a copy of your comments. They're very kind.

I would also like to take an opportunity to indicate that the new members on this committee are Mr Agostino and Mr Conway, and to welcome Mr O'Toole and Dr Galt who are here today as new members of our committee.

Seeing no further business, is there a motion to adjourn? The meeting is adjourned.

The committee adjourned at 1539.

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*Mr Jerry J. Ouellette (Oshawa PC)
Mr Joseph N. Tascona (Simcoe Centre PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mr Dan Newman (Scarborough Centre / -Centre PC) for Mr Baird
Mr Tim Hudak (Niagara South PC) for Mr Maves

Clerk / Greffier: Mr Todd Decker

Staff / Personnel: Mr Ted Glenn, research officer, Legislative Research Service

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Lundi 24 mars 1997

Standing committee on resources development

Comité permanent du développement des ressources

**Development Charges
Act, 1996**

**Loi de 1996 sur les redevances
d'aménagement**



Chair: Brenda Elliott
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STANDING COMMITTEE ON
RESOURCES DEVELOPMENT

Monday 24 March 1997

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Lundi 24 mars 1997

The committee met at 0936 in the Ramada Inn and Convention Centre, Oakville.

DEVELOPMENT CHARGES ACT, 1996

LOI DE 1996 SUR LES
REDEVANCES D'AMÉNAGEMENT

Consideration of Bill 98, An Act to promote job creation and increased municipal accountability while providing for the recovery of development costs related to new growth / *Projet de loi 98, Loi visant à promouvoir la création d'emplois et à accroître la responsabilité des municipalités tout en prévoyant le recouvrement des coûts d'aménagement liés à la croissance.*

The Chair (Mrs Brenda Elliott (Guelph): Good morning, everyone. I'd like to call to order the first day of our public hearings for Bill 98.

Our first order of business this morning is approval of the subcommittee report. Could I have a motion, please, from Mr Young.

Mr Terence H. Young (Halton Centre): I move adoption and approval of the subcommittee report.

The Chair: Any comments? All in favour? Carried.

On behalf of the committee this morning, I'd like to welcome everyone. We're very pleased to be here in Oakville. This is the riding of Halton Centre, capably represented by our colleague Terence Young. We are pleased with the interest that's being shown in this bill and look forward to the presentations that we will hear in the next few days.

MINISTER OF
MUNICIPAL AFFAIRS AND HOUSING

The Chair: The first presenter this morning is our minister, Mr Al Leach, who will make opening statements. By all-party agreement, we have allotted an hour for your presentation and then questions from both the opposition and the third party. Welcome, Minister Leach.

Hon Al Leach (Minister of Municipal Affairs and Housing): Thank you. Good morning, ladies and gentlemen. It's a pleasure to be here and I'm glad to have the opportunity to open the standing committee hearings on Bill 98, the Development Charges Act, 1997.

As you're well aware, we've been getting quite a bit of feedback on this bill, since we introduced it last November, from the media, from the building and the development industries and especially from Ontario's municipalities. I'd like to set the stage for these hearings first of all by thanking the members of this committee for all the hard work that I know you're going to be putting in over the next couple of weeks.

Standing committee hearings are an important part of the legislative process. They give interested parties and members of the public a chance to speak directly to their elected representatives. Just as important, standing committee hearings give people a better chance to understand what the legislation is all about. That's why I'm pleased to open these hearings on Bill 98 by tabling the draft regulations that accompany this bill. These draft regulations will contribute to a more productive and thorough discussion of the bill, and they'll give people a much clearer understanding of the detailed issues involved in this important piece of legislation.

What are those issues? First of all I'd like to talk about the broader implications of this bill. This legislation is about prosperity in Ontario; it's about the long-term competitiveness of Ontario business; and it's about fairness. The current Development Charges Act has become a barrier to economic competitiveness in Ontario. It wasn't meant to work that way.

When the original Development Charges Act was introduced in 1989, I am sure it was done with good objectives in mind. The new act was going to make municipal councils more accountable. It was going to provide a consistent, reliable and fair way for municipalities to recover the costs of services they provided for new development. These charges would pay for the water and sewer systems, for the roads and hydro that were needed before development could even take place.

The 1989 Development Charges Act was well intended, but in the eight years since it was proclaimed something has gone fundamentally wrong. Today in some municipalities in Ontario development charges can account for \$20,000 on the cost of a \$160,000 house. That's 12% of the cost of that new home. Right off the bat, before we think about any of the other consequences, we have to recognize a simple fact: Development charges that high can make a new home unaffordable for the average Ontario family.

High development charges can also help to explain why the construction of new apartment buildings and other multiresidential projects is at a standstill today in Ontario. They can help to explain the high costs of commercial development and the high costs of industrial expansion.

Think about that last point for a minute. A business wants to put up 100,000 square feet of industrial space. That kind of expansion could bring jobs and growth to any community in Ontario. But then the business learns that before it can begin to expand, it has to hand over \$200,000 in development charges. Is it any wonder that business thinks twice before building or expanding in that community, or anywhere else in Ontario, for that matter?

Where does that leave us? It means fewer homes get built, fewer apartment units and commercial buildings are constructed and fewer industrial firms choose to build. That leads to lost jobs, lost taxes for Ontario communities and lost opportunities for economic growth and prosperity for everyone in the province.

What started out as a fair way for growth to pay for growth has ended with growth paying for more than its fair share. It has ended up as a barrier to economic prosperity in this province. In short, the Development Charges Act as it currently stands is encouraging much higher costs than are necessary, and much higher charges, I am sure, than were envisioned when the act was introduced in 1989.

In November 1995 this government began a fundamental review of the Development Charges Act. We wanted to make sure that we could reduce the cost of development. We wanted to reduce the cost of constructing new homes and apartment buildings. We wanted to reduce the cost of industrial expansion. We made a commitment to ensure that the financing of new infrastructure and growth-related services was fair.

The review took a long, careful look at some very key questions: Should development charges be used to finance all new services and facilities they are now paying for? What about the standards that municipalities were using when they calculated development charges? Were some of these standards inappropriately high and therefore too costly? Were development charges paying only for facilities and services that were growth-related, or were they also going towards fancy new facilities that would be used and enjoyed by everyone else in the entire community as well? That's where the fairness comes in.

What happens to new home buyers as soon as they move into their new house? They pay development charges that go towards new facilities that are going to be built some time in the future. But at the same time, they immediately begin to pay property taxes that go into general municipal revenues to refurbish, maintain or replace facilities already in that community. That's why high development charges can be unfair to new families in a community. It seems doubly unfair when these new families, many of them struggling to pay for their first home, are asked to pick up the tab for fancy new buildings that are going to be used by everyone else in the community as well.

During our fundamental review of the act we consulted with stakeholders in every sector. People in the development and home building industries thought government should make some radical changes to the Development Charges Act. They called for drastic reductions in the kinds of services and facilities that could be eligible for funding through development charges. You'll hear these comments expressed over the next few days by everyone in that industry. Municipalities, on the other hand, wanted the act to remain exactly the way it is today. I'm sure you will hear from the municipalities in their comments on that as well.

But both sides agreed on one thing. They agreed that development is extremely important to the economic health of this province and that it shouldn't be jeopardized. That was the starting point for our fundamental

review, and today it is still our central goal in revising the Development Charges Act. We want to ensure that development is not jeopardized in this province.

Under the terms of the new Development Charges Act, municipal councils would be asked to calculate the actual benefits coming to new residents from these services when they calculate growth-related costs instead of letting new development and newcomers pay for more than their fair share.

Under another provision of the new act, municipal councils would be required to include in their background studies the long-term costs of any new services or facilities they are considering for funding through development charges.

A new and revised Development Charges Act would also promote industrial growth. Under its terms, any new industrial expansion of up to 50% of existing gross floor area would be exempt from development charges.

However, there are two key revisions that go to the heart of our concerns about the existing Development Charges Act. They go a long way towards addressing the concerns that prompted the fundamental review of the act in the first place.

First, we are proposing that the scope of services eligible for financing through development charges be reduced. Under this provision, charges could no longer be imposed for municipal facilities such as museums, city halls, tourism facilities or theatres. What's our reasoning here? It's simple. Everyone in the community is going to enjoy the new art gallery or the new theatre. Everyone will draw the benefits coming from the new city hall or the new tourism facilities. So we believe these facilities should be financed through other municipal revenues and not through development charges imposed just on new residents and new businesses alone. Instead, everyone in the community, new residents and existing residents, can decide together whether they need a new city hall or a new museum and whether and when they want to pay for them.

Second, we have proposed changes to the act that would increase municipal accountability. We are proposing that in the future municipalities make a contribution from general municipal revenues of 30% of the cost of new facilities like libraries and community centres. We also proposed that municipalities make a contribution, again from general municipal revenues, of 10% of the costs of infrastructure needed for new development. This would include services and facilities such as water and sewer systems, roads, hydro, fire and police services, transit and waste management.

As I pointed out earlier, in the time since Bill 98 was introduced last November we have received quite a bit of reaction to our proposed revisions to the Development Charges Act, especially from Ontario municipalities. Shortly after the bill was introduced, the mayors and regional chairs from the greater Toronto area, along with representatives from the development industry, established a committee to review the proposals of Bill 98. As the government, we said at that time that we supported a review of our new bill. In fact, we sent representatives to meet with the committee to clarify key provisions of the new legislation.

We also said at that time that we were more than willing to listen to reasonable concerns about the proposed revisions to the act. We said that if the legislation could be improved, then it should be. That is what the legislative process is all about. More important, we wanted to hear good, concrete solutions to the problem of high development charges. We were open to sound arguments about this proposed legislation.

I am here today to tell you that, indeed, we did hear some good, sound arguments. Stakeholders have pointed out that many of the measures we are introducing would go a long way towards achieving our primary objectives, such as reducing the scope of services eligible for funding through development charges, requiring that municipalities use average standards of service when calculating future growth-related costs, or exempting from development charges any industrial expansions that were up to 50% of the existing gross floor area.

I fundamentally believe that these changes will result in a better development charges system. However, some of these same stakeholders told us that our proposal for municipalities to contribute 10% of the costs of key growth-related infrastructure could have serious negative effects. Municipal officials told us that this requirement could result in an increased and unfair tax burden on existing taxpayers. It could result in a freeze on development, because many municipalities would no longer be able to afford the costs of new growth. After all, roads and water and sewer systems are not susceptible to gold-plating. Municipal councils are very prudent when it comes to the costs of these facilities that are required for occupancy.

0950

We said we were ready to listen, and we did. These arguments met our criteria. They were both reasonable and sound. Consequently, I would like to announce today that the government intends to move the following motion to amend Bill 98 during the clause-by-clause review in this committee: The requirement that municipalities contribute 10% of growth-related costs of water and sewer systems, roads, hydro and fire and police services would be removed from Bill 98.

We want to announce this intention now so we can hear the public's comments on it and so it can receive this committee's careful consideration. Removing this requirement will ensure that our central goal in revising the Development Charges Act is met. Development activity will continue to be promoted and encouraged in Ontario.

A final decision regarding the 10% municipal contribution towards transit and waste management will await input from these hearings. I look forward to the comments from this committee and which this committee will receive on how transit and waste management should be funded. Similarly, the government looks forward to the input of this committee with regard to the 30% municipal contribution for facilities such as recreation centres and libraries. As I said before, this is what the legislative and public hearing process is all about.

In the final analysis, we believe the new Development Charges Act, 1997, would go a long way towards funding growth in a way that's fair to everyone. This legislation

would serve the needs of the people of Ontario; it would make new homes more affordable; it would create growth and jobs and promote industrial expansion; and it would stimulate the economy of this province, which is of utmost importance.

The Chair: Thank you, Minister. We now go to the official opposition.

Mr Gerry Phillips (Scarborough-Agincourt): How much time do we have?

The Chair: You'll have about 20 minutes.

Mr Phillips: For each caucus.

The Chair: For each caucus, yes. No, excuse me, for your caucus and for the NDP caucus only; the government is waiving its statements time.

Mr Phillips: Oh, good, so they don't want any time with the minister.

Another bill fallen apart, I guess is my first reaction, and another mistake that's being slowly corrected.

You make some claims about significantly reducing the cost of housing and things like that. To give the committee some idea of what we're talking about here, what's the total cost of these development charges that you had assumed would be taken off the housing sector? How many dollars?

Hon Mr Leach: Obviously it depends on —

Mr Phillips: Across the province, your total estimate of the millions of dollars that you assume.

Hon Mr Leach: I don't know whether we have a number for across the province, total. I'm saying it depends on the municipalities. Only about 10% of municipalities charge development charges at this point in time, but we know that for example —

Mr Phillips: Ten per cent do?

Hon Mr Leach: About 12% of the cost of a new home in some areas. As I think I mentioned, in some areas you can get \$20,000 on a \$160,000 town house, and we're reducing that by about 20%.

Mr Phillips: So \$4,000 a home, is that what you expected?

Hon Mr Leach: Yes.

Mr Phillips: So you were planning to offload \$200 million on to the property taxpayers; is that what your plan was?

Hon Mr Leach: No, not necessarily, because —

Mr Phillips: That's \$4,000 a unit times 50,000 units.

Hon Mr Leach: It depends on what level of service municipalities provide. In some instances they're collecting development charges at the present time. I think in Mississauga they've put in reserves for development charges of about \$200 million or \$250 million and haven't provided the services as of yet.

Mr Phillips: But your officials must have given you an estimate of how much the development charges that you are charging were going to rise and therefore how much they won't rise and therefore how much is going on property tax. You've just told us that you expect a reduction of \$4,000 per unit. I assume, then, that you're telling us you had planned to move \$200 million off development and on to the residential property taxpayer.

Hon Mr Leach: The whole premise is that growth should pay for growth, not for any more than that, so the development charges that should be charged should pay

for the new growth that occurs. There shouldn't be any downloading of costs on to the municipal tax base for any of the new growth. What we're proposing is that the Development Charges Act and the manner in which it could be applied would ensure that the costs of new development were paid for by development charges, but services that are provided to the entire community should be paid for by the entire community. So there's no attempt to download anything.

Mr Phillips: With your announcement today, how much money do you feel was going to be raised off these development charges that you had planned to remove and now are back on? The decision you've announced today, can you tell us how much money you now have decided to put back on to the development charges?

Hon Mr Leach: What we're saying is that 100% of the hard services —

Mr Phillips: But how much money is that? Can you give us some —

Hon Mr Leach: No, I don't have the numbers.

Mr Phillips: But surely you should have an estimate. Aren't you asking us to —

Hon Mr Leach: No, because it's entirely up to the municipality. This act allows municipalities to charge development charges, but it's not mandatory that they do. A municipality could decide tomorrow, "We made a decision not to have development charges," so it's very difficult, in fact impossible, to come up with a number.

Mr Phillips: But Minister, you're saying that you had planned to reduce the cost of housing substantially. That was your claim in your document here, that they've "gone fundamentally wrong...much higher costs." You've now announced today that you're putting the development charges back on to the housing. We simply want to know from you, and surely you owe us that: How much money have you decided to put back on an average home that had a development charge, you took it off, you now put it back on?

Hon Mr Leach: What we're saying for hard services is that it would remain the way it is at the present time.

Mr Phillips: But how much money have you decided to put back on? Can your officials give us that answer?

Mr Norman Manara: First and foremost, the 30% the minister referred to, there are ways that municipalities can get efficiencies in the ways of delivering services. That's one of the things they would have to look at, cost-effective ways of delivering services. So it doesn't necessarily translate back into the system as a cost on municipalities.

The other thing that you —

Mr Phillips: Do we have an answer on that?

Mr Manara: I'm saying it depends again on what the circumstance for that individual municipality is. In many instances municipalities already discount some of the costs in terms of the services they're providing.

Mr Phillips: Chair, can I just ask you if the committee could get from the minister or the officials — the premise on the bill was that housing costs were very much higher than they needed to be because of development charges, up to \$20,000 per unit. That's the minister's speech. They had planned to take the 10% charge off. It now is back on. Can they give us an estimate of how much money

that means they've now put back on to an average home? They may not have it today, but if the premise of the bill was that the government had said it was going to reduce the cost of housing, it must have had an estimate for that. They've now changed the bill, and I'm making a formal request that the minister or staff provide that information for us. That can be done, I assume.

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Hon Mr Leach: If it can be done.

Mr Phillips: But surely, Minister, if your development charge was \$20,000 per house — you said your original plan would reduce it by \$4,000, you've now changed that plan and I assume it's gone back on — all we need to know is, what have you decided to add back on?

My second question is that there is this series of development charges. Can you give us now an indication of how much of the development charges you are removing from the development? I assume you are saying that those things still have to be built; it's just that they will be funded not by the development but by the existing taxpayers. How much money do you expect is transferring from the development charges to the existing property tax base?

Hon Mr Leach: What this bill does is ensure that the cost of new development, the cost of new growth, is covered by development charges.

Mr Phillips: But you've indicated to us how much is collected currently.

Hon Mr Leach: What we're saying is that any costs that are required beyond what is needed for new growth are paid for from the general tax base.

Mr Phillips: How much is that? How much currently is raised from development charges that you now expect would be transferred on to the property taxpayer? Do you know that number?

Hon Mr Leach: I don't anticipate that anything would be passed on to the property taxpayer.

Mr Phillips: Who else pays for it?

Hon Mr Leach: We're saying that the development charges that should be charged should pay for new growth. Growth should pay for growth; we're saying that. But what we're saying is that new development, the new home buyer, shouldn't pick up more than his fair share and cover off the costs of services that will be of benefit to the entire community. That cost should be related to the general tax base.

Mr Phillips: But you have said that because of these exorbitant development charges, "gold-plated," to use your term, that are currently put on development, you're moving over on to the property taxpayer. I simply want to know, and I think you owe us this: How much money do you expect that is currently being raised from the development charges will be moved over and paid for off the property taxpayer?

Hon Mr Leach: The answer is none —

Mr Phillips: That's impossible.

Hon Mr Leach: — because the development charges will pay for new growth. Right at the present time, we believe that there are development charges being charged that cover more than new growth.

Mr Phillips: Of course there are. But I'm saying, how much is currently being used that way that now the

municipalities will have to raise through property tax? Surely you must have that number, because that's the premise of your bill.

Hon Mr Leach: Let's go around this one more time. What we're doing is ensuring that the new growth pays for new growth and that if a municipality wants to provide a facility that is beyond what is required for new growth, then that should be paid for by the property tax. But to have a global number province-wide is difficult, if not impossible, because you have to look at it from a municipality-by-municipality standpoint, remembering that this act allows a maximum charge and the municipality can discount or have zero, for that matter.

Mr Phillips: Are you saying to us that your ministry does not have a figure on how much money is being raised by development charges currently and how much, on average, you have decided to take off development and put on to this? That has to be the premise of your bill and surely you can provide us with that.

Hon Mr Leach: We can tell you how much municipalities are raising through development charges at the present time.

Mr Phillips: And how much on average will be moved, as a result of this bill, off the development charges and on to the residential property taxpayer.

Hon Mr Leach: We can give you an estimate of that.

Mr Phillips: Of the 30% that you are going to continue to allow to be raised, how much money currently is being raised with that 30%?

Hon Mr Leach: That's on the soft services?

Mr Phillips: Yes. How much do you expect will have to be raised now by the property taxpayer? And on the 10% charge, you are removing all of the 10% provisions?

Hon Mr Leach: With the exception of transit and waste management, and we would like this committee to take into consideration the deputations that are made on that. We're exempting the 10% on all of the hard services such as roads, water, sewer etc. We're proposing to leave the 10% on waste management and transit subject to the presentations that are made to this committee.

Mr Phillips: Do you have the number of how much money that would represent?

Hon Mr Leach: Not particularly, no. I don't know how you'd come up with that number because I don't know how you'd come up with a number for waste management, for example, of what's going to be required for the future.

Mr Phillips: The expectation is that the price of homes will drop as a result of this bill. Can you give us an estimate of how much you expect the price of homes to drop as a result of the bill?

Hon Mr Leach: Again that's extremely difficult to estimate. If everything stayed at a standstill, if there were no increases in the costs of materials or increases in other costs, on the example that we used, the \$160,000 town house, that would probably drop by about \$5,000.

Mr Phillips: By \$5,000? That's interesting.

Hon Mr Leach: If everything stayed equal, if nothing —

Mr Phillips: With your bill it will drop by \$5,000, is that right? Does that therefore mean the municipalities have to find \$5,000 more money to fund the services?

Hon Mr Leach: No. What we're saying again, to repeat, is that 100% of the services required for new development would be paid by the development charges. What we're indicating is that there were development charges being charged that went beyond what was needed for new growth.

Mr Phillips: But I take from you that you expect a \$5,000 drop in the price of homes as a result of your bill.

Hon Mr Leach: I'm saying if everything stayed equal, the reduction in the development charges that could be charged would be equal. In that example it would be about \$5,000.

Mr Phillips: Can I assume that the municipalities — first, they're not wasting the money, they're not throwing the money away; they're building needed provisions — every time you raise \$5,000 less from development charges —

Hon Mr Leach: It's not a matter of waste.

Mr Phillips: — Mississauga now has to find \$5,000 more money off the property taxpayer?

Hon Mr Leach: No. What we're saying is that the new home buyer, the young couple that's going out and buying their new home, should only pay for the services that are required for that development to get that new home. If there are services that are being provided beyond that, that should be shared by the entire community, including the new home buyer, who starts paying taxes.

Mr Phillips: I understand that, but the entire community has to find the \$5,000 per unit then, right?

Hon Mr Leach: Or ensure that the services that are provided are contained only to what's required for the new development.

Mr Phillips: But \$5,000 is more than I had expected from your bill. I assume now Mississauga has to find \$5,000 per unit.

Hon Mr Leach: That's an interesting concept but you can't protract it out in that manner.

Mr Phillips: Why not? You're saying the development charges will drop by \$5,000 on a unit. The services all have to be paid for, I assume.

Hon Mr Leach: The services would all be paid for. Any service that is required for the new development would be paid for by the new development. That's what we're saying.

Mr Phillips: But it's dropping by \$5,000. They're going to spend the money. Mississauga has to spend the money. The development charge drops by \$5,000 —

Hon Mr Leach: They haven't so far. They've banked about \$250 million so far in reserves, as they've charged for development charges and haven't spent the money. So it's not a matter of, you have to rush out and raise taxes every time a new development takes place. They apply the development charges now for something that's going to be required some time in the future.

Mr Phillips: I thought your plan was to reduce the cost of homes and to have the other property taxpayers pay for it, the \$5,000, but now you're saying you want to get at the reserves in Mississauga.

Hon Mr Leach: No. Nothing could be more off base than that assumption. What we're saying is that they collect money for a library; the library is going to be

built at some time in the future. They put that money into reserves. When the new library is required, they take the money out of those reserves and build the library.

Mr Phillips: The \$5,000 is an interesting figure. Is my time finished?

The Chair: Actually, your colleague has a question as well.

Mr Mario Sergio (Yorkview): No, that's fine. If he's got more questions he can carry on.

The Chair: It's up to you.

Mr Phillips: Go ahead, Mario.

Mr Sergio: Just a couple of questions. Do you have any other amendments that you're proposing to make to this bill, Minister?

Hon Mr Leach: I'm sure there will be other amendments. I don't think a bill has ever gone through the House that didn't have a number of amendments, and that's what this process is all about, to give the stakeholders an opportunity to come in and comment and make suggestions on how the bill can be improved. I'm sure there will be suggestions that will cause some amendments. I don't have any amendments at this point in time, although I would hasten to add that we're looking forward to the comments both from the industry and from the municipalities on the 30% copayment and on the 10% on transit and waste management. If there are arguments put forward that would revise those copayments, we would be glad to hear them and make amendments, if there are strong, solid arguments made.

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Mr Sergio: You gave us some notice that you're willing to remove the 10%.

Hon Mr Leach: Yes, we intend to introduce an amendment to take the 10% for roads and services —

Mr Sergio: So you have in mind other amendments that you wish to introduce. I was wondering if we could have them now so they can also be debated, if you will.

Hon Mr Leach: No. What we have in mind is listening to the presentations by the deputants, and if there are strong arguments put forward to suggest that amendments should be made, then we would be prepared to make them.

Mr Sergio: In other words, we will expect some amendments from you later on, before we decide.

Hon Mr Leach: As a result of the hearings I'm sure there will be some amendments.

Mr Sergio: How much time do we have, Madam Chair?

The Chair: You have about four minutes.

Mr Sergio: Bill 103, which is one of your other bills, is supposed to give local municipalities all kinds of powers to conduct their affairs.

Hon Mr Leach: No. Bill 103 does absolutely nothing other than amalgamate the six municipalities in Metropolitan Toronto.

Mr Sergio: With no other strings attached?

Hon Mr Leach: That's the sole intent of Bill 103.

Mr Sergio: I see. How would municipalities conduct their own affairs without interference from the province in Bill 103 then?

Hon Mr Leach: I don't know how you draw any connection to Bill 103 and the powers of municipalities.

Mr Sergio: Bill 104, Bill 106, would that be the same thing, Mr Minister?

Hon Mr Leach: I can't comment on Bill 104. That's the education bill. Bill 106 is the property tax bill and it obviously is going to bring some fairness and equity into the property tax system by having everybody pay their fair share. Bill 103, which is the City of Toronto Act, relates only to the amalgamation of the six municipalities into a single city.

Mr Sergio: What I'm trying to get to is if we can see this right, because we are telling municipalities that they have a right to conduct their businesses, and then we are hearing, "You cannot use certain taxes." There are many taxes municipalities could collect from — not to do. We know that the local municipalities will spend their taxes according to their needs, and if one particular community within their municipality needs a community centre they don't have, which they couldn't get over the many years, they should be able to build that swimming pool or community centre or fire station.

Hon Mr Leach: There's nothing to stop them.

Mr Sergio: What we are doing here again is imposing on the local municipality and saying, "You cannot use development charges," which is one of the areas that municipalities sure have a free hand in, instead of saying: "That's your pool of tax dollars. Use it wisely. Use it for whatever is needed." We are saying, "You cannot use it for a theatre, a fire station, ambulance, whatever." Minister, what is the message you're telling the municipalities?

Hon Mr Leach: What we're saying is growth should pay for growth, but growth shouldn't pay for services that the entire community can use. I don't think it's fair that a young couple going out and buying their first home should have to pay for a facility that is used by everybody else in the community. They should only pay for the services that are required for their growth, for their expansion. If they cause an expansion of services as a result of that new development, they should pay for it, but they shouldn't pay the total cost of a new city hall. Everybody should contribute.

Mr Sergio: I have another few questions, but I'll concede.

Mr Phillips: I just want to confirm the number of \$5,000 per unit.

Hon Mr Leach: I said, Gerry, that based on the example of \$20,000 on a \$160,000 townhouse, in that example the reduction would be about \$5,000. But you can't say that applies to every house that's going to be built in Ontario.

Mr Phillips: Okay.

Hon Mr Leach: And that's everything else being equal.

Mr Phillips: That is after your amendments; is that correct?

Hon Mr Leach: Yes.

Mr Phillips: That's useful.

Hon Mr Leach: Well, it's going to depend on what —

Mr Phillips: No, that's very helpful, \$5,000 a unit.

Mr Tony Clement (Brampton South): How did you get that figure?

Mr Phillips: That's what he's saying. He just said \$5,000 a unit.

Hon Mr Leach: I said as an example. That's one example.

Interjections.

Mr Phillips: He's the minister. Let the minister speak.

Mr Clement: You're a master.

Hon Mr Leach: As one example, on a \$160,000 townhouse where the charge is \$20,000, in that example the changes that we're proposing could result in a reduction of about \$5,000. But to try and extract that so that every house that's going to be built in Ontario cannot be done.

Mr Phillips: That's a useful number.

The Chair: We'll now move to the third party, to Ms Churley, for questions or statements.

Ms Marilyn Churley (Riverdale): Minister, I'm looking forward to the further information on the numbers. You're lucky; I'm not the numbers man, so to speak, for my party.

Hon Mr Leach: Neither is he.

Ms Churley: Did Hansard pick that up? "Neither is he" meaning Gerry Phillips.

Mr Phillips: Oh God, Al, your ego knows no bounds.

Ms Churley: I'm not going to get into them in great detail. I did have some questions that have been most ably asked, I may add, by my colleague the finance critic from the Liberal Party.

Mr Sergio: Try to get the answer now.

Ms Churley: I look forward to getting these figures later.

Hon Mr Leach: By the way, my official just told me there was about \$300 million.

Mr Manara: Yes, municipal-wide in 1995. Roughly \$300 million in total development charges in 1995.

Ms Churley: In 1995. That's across —

Mr Manara: Across the province.

Ms Churley: Right across the province. Okay.

Mr Phillips: Then they put it on the property tax.

Interjection.

Ms Churley: Excuse me, member for Mississauga South. I have the floor now.

Mrs Margaret Marland (Mississauga South): I'm only speaking to Mr Ouellette.

Ms Churley: Minister, about 40% of municipal transfers are gone, taken away by your government. At the time that happened, the municipalities were told that they would be given a toolbox full of appropriate tools to make up for those losses.

I think you've been hearing from Hazel McCallion and others that development charges are one of the few really flexible areas that they have outside of raising taxes and that with the loss in the transfer payments — and now of course added to that is the downloading. We have no idea at this point where things are in negotiations between you and the municipalities, but there's great fear that the municipalities are going to be on the losing end of that stick, given what we know today. Now, I'm happy to hear that some of that is changing.

I have heard — and I personally have seen no proof to the contrary, no evidence whatsoever — that developers are actually going to charge less for housing because

development charges go down. In fact, generally what happens is that houses are sold at the market rate. I'd like to know what evidence you have, what information you've gathered, what background you have, anything you can show us to prove and guarantee that for that young couple you like to refer to, the cost of their housing will actually be reduced by the amount the developers say. What evidence do you have of that and can you table it?

Hon Mr Leach: I can say that will be brought forward during the presentations by the development industry. I can assure that if it was a straight pass-through to the home buyer, then the development industry really couldn't care less about development charges, using your analogy.

Ms Churley: They can make more money. If they don't have to pay as much to develop it, with all due respect to my friend sitting over there from the Urban Development Institute, they can make more money.

Hon Mr Leach: The cheaper they can provide a new home, the more houses I think that they will sell. For example, the industry will tell you that every \$1,000 reduction that you have in a home generates about 6,000 more potential buyers. Every time they can reduce the cost of a new home by \$1,000, they have a potential of 6,000 more potential buyers. That's the benefit to the industry: "If we keep that cost down, we'll sell more houses."

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Ms Churley: But you still haven't answered my question. You're saying that the advantage to the developer is he or she can build more houses, which makes more money for the developer, but there's no evidence that the developer, in turn, is going to reduce the cost of that housing for the home buyer. I mean, the marketplace decides that. What evidence do you have? You say that later we'll be hearing from the developers and they're going to give us this information. I believe that you as the minister have a responsibility and a duty to make sure that those prices are actually lowered for the home buyer. You're saying, "Trust us."

Hon Mr Leach: Again, the whole purpose of the bill is to ensure that the residents of an existing community don't have to absorb the costs of growth through the property tax, that new growth should pay for new growth and that the developers are going to go in and take the money that's required for roads, sewers and so forth and apply a levy to each new home that's built, but they shouldn't apply any more than what is necessary for that. That's the intent and the direction that we're going in with this bill.

Ms Churley: My understanding of what could very possibly happen here then is that the new homeowner will buy a house at market value. I still have no evidence, and I've heard from various —

Hon Mr Leach: But if I could —

Ms Churley: Just let me finish my question here. I've heard from various municipal councillors and even from some developers that houses are sold at a market rate. So the homeowner isn't going to save money, the developer is, and therefore, according to you, is able to build more houses to make more money. Then those same home-

owners who will pay market value for their new house will quite likely pay higher taxes, along with the rest of the community, to cover the costs for the so-called soft services that every new community or expanding community needs.

Hon Mr Leach: If I can build a house and put a house on the market for sale at \$5,000 less, or \$1,000, \$2,000 or whatever number it is, less than you can and put them both for sale side by side, then I'm going to sell my house before you're going to sell your house, and that's what drives market conditions. There's no advantage to a developer to walk in and say, "Well, I can take the development charge and just whack it on top, if the developer beside me passes that through to the home buyer."

Ms Churley: But what evidence do you have that the developers are going to do that?

Hon Mr Leach: The evidence is just what you've said. Market competitiveness is what keeps prices down.

Ms Churley: But don't you think that market competitiveness is much more complex than costs of development, the development charges? What makes you think that in itself is going to drastically influence the costs of homes? I mean, there is no evidence and that's what I'm asking for. It's blind faith. When you have experienced municipal councillors and mayors and some developers saying that those costs are not going to be passed on to the homeowner, I would like, and I'm sure this young couple buying their first house would like, to have the evidence that they actually are going to see the savings. So far, I have seen no evidence of that.

Hon Mr Leach: I think the young couple can inquire at the municipality as to what they're paying for development charges, what part of that new home relates to a development charge.

There have been some proposals that that be disclosed at the time of purchase and that's something I would like to have some input on from this committee and through these hearings as well, that if somebody is buying a house, they should be told up front what that development charge is so that they can compare from development to development and so that they can hold their municipal officials accountable as well for new services, what that charge is.

Ms Churley: To come back to the subject of the amendment you made today, that 10% of hard services will be removed, can I ask why you at this point left out, I believe it was transit and waste management, to be determined later?

Hon Mr Leach: Because we wanted to hear the arguments from both the industry and the municipalities relating to those two issues. They're two complex issues. Strong arguments can be made pro and con, and I think this committee should hear those arguments from the development industry and from the municipalities as to what their positions are on transit and waste management before we make a decision on it. That's what this process is all about.

Ms Churley: Why did you, in that case, pick and choose? Why the other hard services? Why leave these two out? I'm sure there are differences of opinions on the others.

Hon Mr Leach: There has been a committee set up of the mayors of the GTA and the development industry to look at this entire bill. Arguments were put forward, and there was agreement reached between the municipalities and the industry that the 10% on hard services could be dropped, and we've listened to that. But the arguments on waste management and transit were still ongoing and I would like to have both of those stakeholders given the opportunity to make their presentations here for you to have input on.

Ms Churley: I just want to come to Bill 107, the sewer and water bill. There are so many of them, it's hard to keep track, but I just did a householder to outline them all for my constituents and so I remember the numbers of each bill. You have a lot of those bills, Minister.

Hon Mr Leach: That's not one of them.

Ms Churley: You're very busy these days. I know water and sewage is not one of them, but it's connected in this bill in a way because it's part of the number of downloading bills, and that is removing sewer and water, those that are within the provincial purview. There is no flexibility there any more. The municipalities have to take that on. It will be given over to the municipalities.

I've asked questions of the parliamentary assistant to the Minister of Environment about this, and one of the concerns we have raised is the privatization of sewer and water services. There is a caveat. There is a clause in the bill which says that anybody who buys the system would have to pay the province back whatever amount of public dollars was put into it, which I think would just be the cost of doing business. It wouldn't be a whole lot of money, no interest or anything attached. So there is great concern and fear overall because of, again, the difficulties that municipalities are going to have in terms of the downloading. I'm sure if you and I got into that we'd disagree, but I'm reflecting what municipalities, leaders and councillors, are saying to me, concerns about that and the funding, the 40% or so that's already been lost, and that municipalities will be more or less forced to sell them off.

Water and sewage, of course, is a hard service and a necessary service for any new community or to be expanded in an expanding community. I'm just wondering, in the context of this bill, if that's been taken into consideration and how that would fit into the whole scheme.

Hon Mr Leach: The only relationship that I think I could tie between Bill 107 and this bill is that if there was a new water or sewage facility required to accommodate new development, then the municipality would have the choice of either operating it themselves or contracting that out. But the cost to the taxpayer shouldn't be affected one way or the other; it's just a matter of who manages the facility.

Ms Churley: So you honestly and genuinely believe that these development charges can be lowered and municipalities can lose that flexibility, and that with the downloading that's going to happen, in whatever variation it finally comes out at the end of the day, and with this flexibility gone, taxes will not have to be raised? And you firmly, honestly believe — how did you put it — that growth will pay for growth?

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Hon Mr Leach: That's the entire intent of this bill, to ensure that growth pays for growth.

Ms Churley: What does that mean exactly? Paint me a picture, okay? Take, say, Oakville or the riding we're in today. What do you know about development that hasn't happened because development charges have been too high? What information do we have that there's going to be so much new development that those costs are going to be covered off, no new taxes as a result for those soft services? We call them soft services but they're absolutely necessary services to a thriving community, as you well know. They have to be financed. Whether it's a new community that has nothing or an expanding community, you've got to have your libraries and community centres and possibly, depending on where amalgamation goes down the road, city hall, whatever. These things are necessary. What evidence do we have?

Hon Mr Leach: I can give you some examples. I don't have them with me but I have been given examples where industrial development has not taken place as a result of development charges, where that industry has decided to locate elsewhere, usually in the United States, as a result of high development charges. The example I used was where an industry had to come up with \$200,000 in development charges for an expansion.

There was one good example, and I don't know whether it's appropriate to use, I think it probably is: Brampton. Chrysler was expanding a plant that didn't cause one single expansion of any municipal service, not one, and they were charged \$800,000 in development charges. I was told by Chrysler directly that they were directed by their corporate headquarters not to do that expansion. They could relocate that plant to the US and get a 20-year tax exemption, never mind an \$800,000 development charge to do it. Fortunately, that plant went ahead. The only reason it went ahead is because the Canadian dollar dropped to 72 cents. If the Canadian dollar had been at 75 cents, that plant would be in the US today.

It's that type of thing that you have to ensure, that we don't kill the golden goose. Growth should pay for growth, but development charges should not be used to create a pot of money for the municipality to use that is not related to the growth that's taking place.

Ms Churley: How can you justify that, given your earlier statements and the Premier's statements that government should get off the backs of municipalities and let them govern themselves? This is a huge interference in the way they're able to determine how to finance infrastructure and how to finance services that are much needed for their communities. How do you justify that?

Hon Mr Leach: This government is giving more autonomy to municipalities than they've ever had before in the history of this province. Municipalities have the ability to make more decisions, to be responsible for all of the services that they're required to provide, far more than at any time ever in the province.

Ms Churley: But they say this is a huge piece of the autonomy that they had that was very important to them to be able to —

Mr Phillips: They couldn't make decisions on long-term care before and now they can.

Ms Churley: Thanks, Gerry.

Hon Mr Leach: They can charge for growth, put development charges on to make sure that growth pays for growth.

Ms Churley: I hope you will table any information you have that actually shows on paper, with numbers attached, how you predicted that growth will finance growth in this aspect and that taxpayers, including —

Hon Mr Leach: To get back to your question, this is still a decision that solely rests with the municipality. The city of Toronto, for example, where you and I represent ridings, has no development charges whatsoever. Most municipalities in the province do not have development charges. That's a decision that the municipalities have. All we're saying is that if you're going to have development charges, this is the maximum amount that you can put on to a new home buyer.

Ms Churley: I would argue, what's wrong with that flexibility? Community is not one cookie-cutter. Communities have different needs and different levels of available financing. I sat on Toronto city council, and you know what some of the issues there were, the tradeoffs that happen all the time between height and giving more height to high-rises. The city of Toronto and other cities found other ways essentially to get something back.

Hon Mr Leach: And they still have that flexibility.

Ms Churley: Yes, and came down to negotiations. That's fine, that's the kind of deal the city of Toronto was able to work out. But that doesn't mean that Mississauga needs to have a cookie-cutter approach to how to levy development charges. That's what mayors of municipalities are saying. They need that flexibility to reflect their own communities.

Hon Mr Leach: They have that flexibility.

Ms Churley: But they won't have it any more.

Hon Mr Leach: Oakville and Mississauga and Brampton and Markham do not charge the same amount for development charges. It varies community by community, depending on what that community needs. Some of them discount it, some of them say, "No, we want new development and we're prepared to raise taxes to generate that new development." That's a local decision by local municipalities.

Ms Churley: How much time —

The Chair: We're right there, within about six seconds.

Ms Churley: Gee, I could have done it in six seconds.

The Chair: Thank you, Minister, for taking the time to come to the committee this morning. We appreciate hearing from you.

Hon Mr Leach: A pleasure.

Mr Phillips: We look forward to that information.

ONTARIO LIBRARY ASSOCIATION

The Chair: We're now moving to the section of the committee hearings where we hear from representatives of various organizations. The first organization that is scheduled to appear is the Ontario Library Association. Good morning. Welcome to the committee. Just so you

know, you'll be given 20 minutes for your presentation time. That will include your own presentation. The remaining time will be divided between the three caucuses. For the record, would you please introduce yourself.

Mr Greg Hayton: My name is Greg Hayton. I'm the president of the Ontario Library Association. The Ontario Library Association is the voice of the library community in Ontario. It is the largest library association in the country, as well as the oldest. We've been representing libraries for 97 years.

The first comment I'd like to make — and I'm sorry that the minister was unable to stay, is that we want to commend the government for the process it has followed in drafting this legislation, these amendments to the Development Charges Act. There's been meaningful consultation with the parties affected by the legislation. The staff in the municipal finance branch brought all the stakeholders together in a long series of meetings in which we were able to provide our views, comment on the views of others. In addition, with the introduction of Bill 20 over a year ago which froze this legislation, the government made its intentions very well known. It gave plenty of notice for interested individuals and groups to respond. The process has proceeded in a timely fashion but without unseemly haste.

This is the way legislation should be developed in a democracy. The reason I wanted the minister to hear that is we are less comfortable with the speed with which he's dealt with other parts of this legislation. I wanted just to be able to say to him, and maybe his caucus will be able to pass that on, that sometimes it's not what you do, it's how you do it; not what you say and how you say it. That's a lesson that I think would be a useful one, because libraries have a number of pieces of legislation that we are concerned about right now. The other is moving with unseemly haste as far as we're concerned.

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When the minister presented this legislation, he focused on job creation, investment and economic growth as the reasons for making these changes. We would have appreciated it if the minister had also identified healthy, viable communities as essential to long-term growth, but in any case, we do agree with the motives of the government. We feel that stimulating economic activity is very important. We'd also like to say that in this age, the information age, public libraries are part of the solution, not part of the problem. Public libraries should be supported, not penalized in their role in economic development, in their role in helping with the educational infrastructure that creates a well-educated, skilled workforce.

When you read my brief later you'll have an opportunity to look at the kinds of activities libraries are involved in relating to both the economy and education, but I won't take that time now.

We have a number of comments to make and suggestions for change, but we want to acknowledge that the government has taken what we see as appropriate and prudent action in continuing to include libraries in the core of development charges. Not only are libraries involved with the economy and education, they are central to the perceptions of people in cities, towns and villages as to what their community is. In fact, it used to

be that every community had a post office, a city hall and a library. Post offices are long gone now. I wonder what's happening with city halls with amalgamation. However, libraries continue to be very important to people and it's important that the government recognize that, and it has.

My other positive comment is that certainly as an association, we support the government's objective in requiring municipalities to set out in detail the background needed to develop their actual development charges bylaw. Most municipalities have been doing this all along; not all, however. We feel it's only right that the government demand that these sorts of studies be done that justify the basis for the development charge.

Where we have a problem — and obviously we were pleased that the minister made his initial comments. I was waiting for the second half of his statement. Unfortunately that didn't come, but I'm sure members on both sides will be working together to influence him in that area. Tony, your past interest in libraries I'm sure will help. In any case, the real problem is those services that have been deemed essential are continuing to be funded by development charges. How can we have something that's 70% essential? No, you can't be half pregnant. This is either an essential service or it's a frill. I don't think people in Ontario communities think libraries are frills. They think they're essential and they should be completely funded.

Let's look at it practically. The minister was interested in ideas about this. You've taken out of the legislation those services that communities tend to only have one of: city halls, art galleries, museums. Those are central services. Okay, so that's the rationale for removing them. When you build a new library branch, you build it in a new community because there's new growth and there are new people. You're not going to get somebody driving all the way across town with three kids in the back of their — I'll just wait for Mr Young because I know he'll feel this is important.

Mr Young: I know it's important.

Mr Hayton: You're not going to get someone driving all the way across town, past their local branch library, to the other side of town to go to a new branch library. The minister said: "Growth should pay for growth. We're going to build a new branch library in a new community, funded by the development charges from that area." That's appropriate, but we're not going to build 70% of the branch and then doubletax the rest of the population for the other 30%. They are not going to drive across town to use that branch. People are going to walk to their local community branch. We'll leave it to the recreation community to make their case. Maybe people drive all over the place to go and play hockey, maybe that makes sense, but in terms of libraries, I can tell you from my own experience it is a community, it is a local-related service. It should not be in that 70% category; it should be moved into the 100% category.

The other point I would like to make: We had long, hot discussions at the meetings the ministry held about the link between current development charges, the act and the high price of housing, the depressed development industry and shrinking jobs in the construction industry.

It's been a contention of our association that neither the development industry nor the government have made any link between those two. In fact, there's a bit of an irony because the government has required in this new legislation that municipalities do a background study, a long-range planning analysis, all this sort of thing before they can put new development charge legislation on the table, whereas we have this legislation in front of us which develops the whole process, and there are no background studies at all. There has been nothing done on this.

Interjection.

Mr Hayton: I'm not getting into partisan discussions here, but I must say the minister really failed to respond to any of those questions. There has been no background work done to justify that link. That's why we do not feel there should be a 30% pullback, particularly in the area we're in, because we do not believe that housing prices are going to drop as a result of not paying 100% of development charges on libraries. In fact, what we can see from the past six to eight months since we had those meetings last summer is that there's been a major change, a significant upsurge in housing starts all across the province. There's been no change in the development charges legislation.

Being a librarian, of course, I just researched this. I brought a couple of pieces of my local paper in Cambridge: "Housing Boom Hits Region." This is March 11. "Recent figures from CMHC show residential construction climbing 350% in the Cambridge-Kitchener area in February this year compared to a year ago."

How about the Tuesday, December 10, Globe and Mail report on business: "New Home Building Heats Up."

"New house construction last month rocketed to a two-year high as rock-bottom mortgage rates and steady prices enticed home buyers.... 'This is as good as we've seen since the latter part of the 1980s,' said John Sandusky, president of Toronto-based Sandbury Building Corp." He goes on to say, "The only thing that could wreck this recovery is a bolt out of the blue like a currency crisis, a banking collapse or a referendum in Quebec."

I see Monarch Development. I presume Monarch Construction and Monarch Development are the same. I'm sure you'll want to ask Monarch Development later on when the vice-president is here. His boss, John Latimer, the president of Monarch, "expects to sell a record 800 homes this year and 'Our order book indicates that 1997 will be even stronger.' The company recently sold a home at its Bridle Trail development in Unionville...for \$845,000. 'We haven't seen numbers like that since the 1980s,' Mr Latimer said. 'It tells me the recession is over and housing is back.'" He goes on to say, "Generally we don't have to give away a free air-conditioner or anything to close a deal."

To be honest with you, if Mr Latimer isn't going to give away a free air-conditioner now that he's got people crawling all over them, do you think he's going to give half back, pass on to that young home buyer spending whatever to build that new home? Do you think he's going to give back the 30% he's saving for the library that's going have to be built down the road? I don't

really think so, and I'd be willing to put a wager on that with any member who'd wish to take me up on it.

Mr Young: The guy with the \$800,000 house has his own library.

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Mr Hayton: You may be right. But Mr Young, we must admit that the minister, using his \$20,000 of development charges on a \$160,000 town house, picked that one as really not a general example. In fact, when the other gentleman tried to put \$5,000 on it, everybody was backing away from it because obviously it wasn't a good, representative sample.

In conclusion, I would like to say that I also think, and our association thinks, that new growth should be paid for by the new home owners. The minister said it about seven or eight times. What he wasn't able to connect was, as far as I was concerned: Why then are we only going to be paying 70% of new growth in a library branch? I hope the committee looks at this carefully. It is necessary. The minister talked about fairness.

It is necessary to balance the contribution of new members to the community with that of long-standing residents who have already paid the costs of current services and facilities through past development charges and their property tax. They wouldn't need that new branch library if they didn't build that new part of the community. The people living in the older parts of the community would continue to use the existing facilities. I think there's a contradiction here that I'm hoping the committee, as it deliberates through clause-by-clause, will look at very carefully.

I'd just like to wrap up by underlining what I've said. We commend the government for the process. We think it's been a good one. We endorse those elements of the legislation which require municipalities to justify their development charges. Having justified them as growth-related, we don't feel that 30% should be taken off. After all, you've already justified that it's growth-related. If you can't justify that it's growth-related, then you can't make that charge, so why do you need the 30% too? It doesn't make sense.

Finally, we want to underline the importance of libraries in this whole process. We're not talking just about building houses, we're talking about community. That's what is going to continue to make this province a desirable place to live and an important place to invest in. Thank you.

Mr Young: Thank you very much. I want to tell you I totally support what you said, that libraries and the information they provide are critical to the economic and educational needs of our province; I totally agree with that. But I want to talk to you about how libraries work and the future of libraries because I'm trying to understand that. I work with the colleges and universities as well, and we know people are getting a lot more information off the Internet. A very high percentage, a relatively high percentage of our citizens have Internet access in their own home.

You made a comment that people won't drive to another library. I tell you, that happens here. For instance, in my community, Glen Abbey, they have a lot of recreational books and self-help which are related to

exactly what you said. But if I want to get a good selection of biographies or academic, I drive to the downtown libraries, so that does happen.

What I want to ask you about — you talk about 70% versus 100% — aren't there new ways that libraries can operate, and aren't the collections going to become even more specialized to provide people with better service? So they might actually be able to operate more economically.

Mr Hayton: May I make two comments? First of all, Mr Young, I don't think Oakville is representative and the average income is representative of the broad base of our province.

Mr Young: I'm not suggesting one size fits all. I'm just telling you my experience as a library user.

Mr Hayton: I'm just responding to your comment about people having Internet in their homes. I think that may be something that is more prevalent here, but I know in my own community of Cambridge, with a significantly different economic base, that is not the case. The library continues and will continue to be the focus for use of electronic resources.

I want to clarify the question of going to another library. My point was that if you have a neighbourhood branch in your community, you are not going to drive past your neighbourhood branch to go to the neighbourhood branch in another, new community. You may well go down to the central library to get additional resources, but you will not go from your neighbourhood, which may be an established one, to a brand-new neighbourhood that has the same size of facility with a new branch. So it's that new neighbourhood which should be paying for the branch in their own —

Mr Young: With respect, though, I disagree. People do that because the collections are different. And people don't walk a lot; they drive more.

The Chair: Our time is short. To the Liberal caucus, please. Very quickly, brief questions and answers.

Mr Phillips: I appreciate an expert witness who knows libraries here. What this is all about is in my mind, and we eventually will get the numbers, I gather there is \$300 million raised every year from development charges and the government is trying to shift a portion of that on to the property taxpayer. I make the assumption municipalities are not foolish spenders of money; they will only build things the community needs. So if they move a portion off development charges, it goes on to property tax. That's what we're talking about here: shifting the burden on to the property tax.

I'd like to get from you the real impact of that in communities across the province, as now the plan is that the existing residential property taxpayers are going to have to pick up 30% of the cost of a library that used to be paid for from new development. What, in practical terms, is likely to happen in municipalities around Ontario that have seen growth, need a library and have that in front of them?

Mr Hayton: There are three or four possibilities, and none of them is actually all that good. What may result is service inequities in different areas of the municipality, if there is a delay in the building of the new facility because the 30% has to come from the broad tax base

rather than from the community that demands it. That's going to shift to an overutilization of services in the other area, and there's going to be a drop in service quality. The alternative, of course, is that taxes are going to go up. So any one of those impacts, or all of them in some form or other. I think it's negative in terms of library service.

Mr Phillips: Does your organization have —

The Chair: Excuse me. Ms Churley.

Ms Churley: Thank you for your presentation. I look forward to reading through this. It seems quite knowledgeable and you've certainly done your research.

I must say that I was alarmed by Mr Young's comments about Internet usage, perhaps implying that community-based libraries are on their way out.

Mr Young: That's not what I said at all.

Ms Churley: I said "perhaps." Why else bring it up? The reality is you could perhaps accuse me of being a Luddite. Although I use the computer myself, I still think the community-based library and the reading of real books, which is a very different process and part of the learning process by which kids learn to read and write and be educated — I was alarmed by the implication of that. My question is, in this short time frame, do you have similar concerns that the whole idea of the community-based library may be overall, at least with this government, starting to lose some popularity and that this defunding could in fact end up moving it in that direction?

Mr Hayton: We are concerned about some changes that are being proposed by this government with respect to library governance. However, libraries in this country have been around a lot longer than any government and I think they would continue to thrive. As for the issue, we don't see it as a competition between computer-based services and book services. We see them both as compatible. They have different roles. They're going to be all part of, I think, an ongoing community-based library, although with that extra 30% of development charges, we'll be able to build those libraries when we should, rather than later down the road.

The Chair: Mr Hayton, on behalf of the committee, I thank you for taking the time to come before us today with your presentation. We appreciate hearing from you.

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CITY OF LONDON

The Chair: Our next presenters come from the city of London. Welcome, Mr Hopcroft. I'm pleased you're able to come before the committee today with your presentation. Please introduce your colleague.

Mr Grant Hopcroft: I'm joined by Peter Christiaans, who is the manager of financial planning and policy from the city of London finance department. For those of you I haven't met before, I'm no stranger to discussions on development charges, having represented AMO during the lead-up to the act that is under review at the present time. After passage of that legislation, I served as a member of the implementation task force, which met for many months, and not for some months, and then met again to try to bring together the divergent views of the development community and the municipal sector.

I'm pleased to have the opportunity to bring forward some perspectives on behalf of my community, the city of London. As with most communities, you probably won't be surprised to learn that the city of London is opposed to much of what's contained in the proposed legislation. Two tenets guide our sentiments. First, we believe that the subject legislation should at least allow for the possibility that growth pays for growth. Notwithstanding what the minister said earlier this morning, that critical concept has been removed from the proposed legislation. Second, the legislation must ultimately ensure that local authority to decide on growth financing is preserved. In fact, we believe that the existing legislation has generally served us well and could continue to do so.

The Development Charges Act was originally passed to provide uniformity in the tools available to municipalities with respect to how the costs of growth could be recovered. The principle behind the legislation was clear: that costs reasonably attributable to development were recoverable from that development and that growth pay for growth.

The new act shrinks from that original principle by limiting the nature and extent of inclusions in a DC bylaw, by limiting the standard to which municipal services are planned and by imposing arbitrary exemptions and reductions on the funding of legitimate growth-related costs. The result? These costs will be thrust on a municipal tax base that is rapidly approaching saturation with the downloading initiatives and who knows what tomorrow will bring.

Let me illustrate with a little background on how London has been evolving and on how our ability to finance growth will be affected by the proposed legislation. We are a geographically large, single-tier municipality. In 1993, we nearly tripled in size as a result of an annexation of predominantly rural lands. Our population today stands at around 340,000, and we expect to continue to grow at a moderate pace in the decades ahead.

To prepare for growth, we undertook a planning process called Vision London between 1993 and 1996. That entailed a significant amount of public input, including the development community. We now have a strategic vision and a new official plan and a number of infrastructure studies, and these studies bear most directly on London's situation vis-à-vis the proposed legislation. The studies contain information on the dollars involved in growing London, and it is these costs that I want to now draw your attention to. They're set out in the table.

You'll see the bare bones are that sanitary servicing will cost approximately \$235 million; stormwater management facilities, \$76 million; water facilities, \$140 million; and roads, \$264 million. These costs, about \$715 million in total, are not all attributable to growth but over 80% are, around \$600 million. The proposed legislation would require us, in simplified terms, to kick in at least 10% of these costs from tax or rate-supported sources, ie, \$60 million.

While I'm pleased to see the amendments introduced by the minister this morning, they still don't go far enough. Contrast the \$60 million that I just referred to with the total size of the city's capital budgets, which are around \$43 million in 1997. Of the \$43 million, only

about \$5 million comes from taxes raised in the year in which those expenses are incurred. It appears that it is from this small pool of \$5 million per year that we are to fund the municipal copayments of 10% and 30%. Ponder that for a moment. If we didn't do a single thing but raise money for the copayments, it would take us about 12 years just to come up with that money. That provides nothing for the usual non-growth capital demands of maintaining roads and sewers, replacing capital equipment and investing in technology that are involved in maintaining the infrastructure in our community.

The picture should begin to get pretty clear: The city will be faced with some mega-infrastructure spending in the coming years, and the competition for dollars to finance its future will be enormous. The provisions in this legislation regarding municipal copayments by themselves, even with the amendments, may be financially crippling to our community and they need to be removed.

We take similar exception to a number of other legitimate growth costs made ineligible for funding through development charges in the proposed legislation. These are:

The prescriptive provisions surrounding the commitment of excess capacity to anticipated development. Notwithstanding the draft regulation, which I've had an opportunity to briefly peruse, it still doesn't go far enough.

The automatic attribution of capital grants and other contributions, however that may be defined, to offset growth related costs. We ask, where is the allocation to the existing population?

The automatic ineligibility of various services, hospitals, parklands and the rather ominous other services prescribed by regulation, as well as the partial exemption of industrial buildings. I say that as a community where in fact we have a total exemption for industrial buildings, but that's been a matter of our local choice.

These reductions arbitrarily and irrationally reduce the pool of costs legitimately recoverable from growth. When taken together, these provisions will place significant pressure on property taxes and user rates, and they will inexcusably compromise the principal that growth pay for growth.

The province is in the process of completely transforming the responsibility for funding of much municipal infrastructure: no grants, no handouts. But with this legislation, the government is taking away the tools needed by municipalities to face the financial challenges. The principle that growth pay for growth should be preserved.

Let me now turn to a second main issue, the need to respect local autonomy and authority in growth-funding matters. We are all aware of the government's resolve to change the face of service delivery in Ontario and the unprecedented steps being taken to disentangle provincial-municipal affairs. Recently, the government initiated and released a discussion paper on the new Municipal Act, which is described as a "cornerstone to defining the new provincial-municipal relationship." The government promises greater flexibility and broader authority.

The benefits? Greater efficiency; the ability to react quickly to local economic conditions and find creative

ways of providing quality services. Greater accountability; clear local authority means clear responsibility. All of this productive change is promised in the Common Sense Revolution. But unfortunately, the proposed changes to the Municipal Act are not mirrored in the development charges before us. Why the anomaly?

If we truly desire local accountability, then we must provide for local authority. How? We must remove the highly prescriptive provisions I referred to earlier. To recap: the mandatory copayments, automatic commitment of excess capacity, attribution of capital grants and other contributions solely to growth and ineligible services and mandatory exemptions and a very broad regulation-making power to the minister to extend those exemptions.

Consider, as a further case in point, the provisions related to standard of service delivery. The legislation calls for service standards no higher than average levels of the past 10 years. This restriction will be problematic. It was one of the big points on which the implementation task force had disagreement which continued for many, many months.

You can see here that the diagram illustrates this, with the vertical axis representing a level of service, for example, one ice pad for 20,000 people or one library for 25,000 people. The horizontal axis represents the passage of time and, with it, the increase in population. As time passes, the standards of service decline. Eventually, finances allow for construction of another ice pad; that is the first upward blip.

The difficulty that all municipalities will encounter in using a 10-year average is that over time the level of service will be ratcheted downward. This will be heightened in communities with slower levels of growth than others. The level of service being replaced will always only be the average, say, one ice pad per 22,000 people, and not the desired local level, one per 20,000.

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The main point of my comments about standards is that you cannot legislate such specific rules. Development charge bylaws cannot be developed province-wide using a cookie-cutter approach. The question of what's an appropriate standard should be part of local decision-making, taking into account local conditions, local needs and local input. The existing legislation served us adequately in that regard.

If we must have new legislation, it should aim to provide a principle, that services to the existing population should not be improved solely on the backs of the development community, and a process to development of policy that provides for participation and an ultimate avenue of appeal.

The city of London last updated its development charge policy in 1995. At that time, I think I can safely say, we in London chose not to pursue full cost recovery through our development charge policy. Rather, we pursued a local process that included consultation with the development community and the public to arrive at a compromise on full recovery that suits us in London. We do not know whether we will be able to afford the same discretion in the future; the pace and scope of change in municipal finance dictate against that at present. The

keys, however, are that we arrive locally at a development charge policy that suits us in London and we need to maintain that local discretion.

This legislation falls fundamentally and woefully short of providing a legitimate vehicle with which our municipality can face the financial challenges of growth. The proposed legislation imposes arbitrary reductions of growth-related capital costs legitimately assessed against development at the very time in our provincial transition when we are striving to achieve greater accountability between the user of a service and the payer for a service. To us, that makes no sense, let alone common sense.

I thank you for the opportunity to present the city of London's views this morning and I look forward to your questions.

Mr Phillips: Thank you very much, Mr Hopcroft. Few people in the province probably know this stuff as well as you do, so we appreciate you being here.

Earlier, the minister said that there's about \$300 million a year raised on development charges around the province. I gather that was last year, so that with more development it may be slightly larger. He indicated that of the \$20,000 currently on a town house, about \$5,000 is going to come off. I gather it's about a 25% reduction in development charges, which says to me that of the \$300 million currently being raised, something like \$75 million will be taken off.

My simplistic view of all this is that those things have got to be built, that the capital has to be built. Municipalities are not throwing money away; they're building these facilities. So if you move \$75 million off development charges, it has to be paid for by the property taxpayer. I don't see any other way of doing it.

Mr Hopcroft: The other way is quite simply not to build those services, which will over time lead to two classes of citizens in our communities — the have-nots in the new communities and the haves in the older community — and these facilities would come under increasing pressure.

Mr Phillips: I could see you doing that short-term, but longer-term, can you sustain that?

Mr Hopcroft: No, you can't. Quite frankly, you can't.

Mr Phillips: Have I got the dimensions right, in your experience? The minister will provide us this information, I gather, but are we looking at reducing the revenue raised by municipalities by roughly 25%?

Mr Hopcroft: In London, it would be somewhere around 10%. That's because we charge far less than our development charge studies show we could charge if we wanted to recover all of the growth-related costs. We exempt industrial development. We have a significant exemption on residential as well as commercial development at the present time because we choose to do that locally.

Our development charge revenue has ranged, over the last 10 years, anywhere between \$2 million and \$12 million annually in total. It's somewhere in the lower end of that range right now, but 10% is still money that is a significant burden for us to try and find elsewhere, particularly when we are trying to position ourselves as a community for future growth.

Ms Churley: Thank you for your presentation. I wanted to come back to the announcement by the minister this morning about the 10% of hard services. You say in your presentation that you welcome that but it doesn't go far enough. I'd like to know, very briefly, what your major amendment or recommendation would be to this bill. Also, if there is time after that, for the time being he's exempted transit and waste management from this 10%, and I wanted to hear what people had to say about that.

Mr Hopcroft: We would welcome any extensions to that list of exemptions. We think the best solution is to have local decisions being made by locally elected councils on how to pay for growth in our communities. We don't think that legislating an exemption from Queen's Park is the way to go.

Ms Churley: Are you saying, therefore, that you'd generally like this bill withdrawn and that —

Mr Hopcroft: I would much rather live with the existing legislation than with this one. The existing legislation has some faults, but they are minor faults compared to the magnitude of what this bill carries with it as far as intruding in local decision-making and binding our hands.

Ms Churley: You don't think it's possible to really amend this to make it reasonably comfortable for your municipality. You'd rather go back to the old act, perhaps with some amendments to that.

Mr Hopcroft: If I was given two choices, the first would be to withdraw it and go back to the basic principles of the existing legislation. If you have to amend it, it needs lots more amendments to lessen the drastic impact it's going to have on local decision-making.

Mr Gary Carr (Oakville South): Thank you very much, Grant, for your presentation. As I said to you in London last week, you're in before all these committees and we appreciate it. You were down on the Police Services Act and many in the past. I don't know how you find the time with all your duties, but we do appreciate that.

I agree with you on the 10%. I was one of the ones who was very critical of that and I'm glad the minister and the parliamentary assistant were able to move on that. But I was interested on page 10 when you talk about the local solution. I agree; I think most municipalities, the vast majority, are reasonable and responsible, particularly when we're giving them more authority. We basically have said that the municipalities will have more control in a lot of areas and I think they are, most of them, responsible.

Is there anything the province could do for those few that may, for whatever reasons, abuse the development charges? Is there anything the province could do to allow good municipalities like yourself to make those decisions, get the local solution? How could the province then guard against the ones that don't? Is there anything you could suggest?

Mr Hopcroft: There are two things. First of all, you can speed up the appeal process. I think people forget there's an appeal process that is supposed to be there to deal with abuses now. It's an appeal process that maybe isn't used as much as some people suggest it should be,

and when it is used, it delays, it creates uncertainty. So shorten that process, fast-track those appeals.

The second thing is to deal with process. We have, I think, a good bylaw in London because we involve the development community and the public in the preliminary stages of our review and it's transparent, it's open. We saw a number of very good amendments that came forward through that process from the development community because of the impacts where Mr Watson or where others wanted to take us were things that we saw as being unacceptable in our community, given the current economic situation.

If you can make the process one where there's greater involvement at an early stage, where the studies are not kept close to anybody's vest and where you truly do involve those who have a stake in the issue at an early stage, I think you end up with better legislation, with better bylaws and a situation where you don't have the kinds of horror tales that we hear from some communities.

Having said that, I think that my limited knowledge of some of the GTA issues and some of the problems that are cited in the discussions and the negotiations AMO has had with UDI and others is that there's an appeal process there that people don't feel is working well for them right now because they can't afford to wait. If people are saying they can't afford to wait and with the economy as slow as it is right now, I hate to think of how that's going to turn out when things hopefully change of the better for us. So speed up the process and eliminate the uncertainty.

Mr Carr: Very good point. Thank you, Grant.

Mr Ernie Hardeman (Oxford): Grant, just quickly, you said under your development charges in London you presently do not charge the allowable limits that your study would indicate you could charge and for one reason or another you've decided that a lower amount is appropriate. Do you see that as a way of dealing with the 30% services, that you could use that movement in there? You charge less now. If that was the 30%, would that solve some of your concerns?

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Mr Hopcroft: No, not really, because when you set it in regulation or you set it in legislation, that is telling us that we have to raise money to pay for growth in a way that may not suit our local circumstances. Quite frankly, people are more prepared to pay for some services than others. Those are political judgements that we don't think should be second-guessed by others.

The key issue in my view is, are the services that we are imposing charges for properly classified as growth-related costs? Whether we choose to charge 50%, 0%, 100% or 80% should be a local decision.

The Chair: Thank you, Mr Hopcroft. Our time has expired. We appreciate your taking the time to come to Oakville today to make your presentation.

Mr Hopcroft: I appreciate the opportunity to present our views to the committee. We look forward to seeing some amendments at the end of your hearings.

Mr Sergio: Madam Chair, can I make a suggestion, please? Sometimes to split a couple of minutes at the end of a presentation three ways is very hard. Can we do it in

rotation? This way we may have two or three minutes each if we go in rotation.

The Chair: I have been doing rotation.

Mr Sergio: I know, but it's splitting two or three minutes in rotation and it really doesn't give any side to ask even one question. If we were going in rotation to ask a question of whatever, if there's any time at the end, fine. If there is no time, we don't ask those questions, but to go in rotation.

The Chair: I'm being very strict in the time today. Thank you.

URBAN DEVELOPMENT INSTITUTE/ONTARIO

The Chair: Our next organization presenting is the Urban Development Institute. Welcome, Mr Kaiser.

Mr Stephen Kaiser: Thank you, Madam Chairwoman. Good morning. With me is Mark Jepp, vice-president of the Urban Development Institute. I'd like to thank you for allowing us the opportunity of providing our thoughts this morning on Bill 98, the new Development Charges Act, from the perspective of the land development and home-building industry.

Let me say from the outset that we fully support the government's direction with this legislation. It is founded on clear, well-conceived objectives which were set out by the minister in November 1995, all of which are cornerstones of this government's agenda.

We believe the new act will achieve these objectives and go a considerable distance to control the level of municipal services, to ensure that development charges are not a barrier to economic growth, to reduce the cost of providing new construction and to improve the job creation potential of our industry.

If I can accomplish one thing in my presentation this morning, that would be to dispel the myth that still exists in the minds of some people that this legislation is a gift to the development industry.

I want to tell you that I am passionate about the industry I represent and I personally believe that this legislation is a major step in the right direction. This industry was my summer job through high school and university in the early 1970s. I started out as a construction labourer, advanced to a framing crew and eventually supervised a commercial job site. In 1986 I joined my father and formed a small construction company and was active building homes throughout the Niagara region when the first Development Charges Act was being introduced and enacted in this province.

I can tell you that I was personally involved in the discussions, debates and, in some cases, appeals of development charges bylaws in five municipalities alone. In every case the draft bylaw was a blatant attempt to pile a shopping list of charges on to new growth, charges that were clearly the joint responsibility of existing and future taxpayers. At the same time there was absolutely no concern given to the economic impact this increase would have on the cost of a new home or a new business or expanding business.

In 1994, I joined Bramalea as vice-president of their residential operations. At that time we were building in

eight communities across the greater Toronto area, from Burlington to Pickering, and I can tell you from that experience that I know first hand the crippling effect these charges had and continue to have on our industry.

In the early 1990s, as president of the Ontario Home Builders' Association, I travelled the province quite extensively and during my term I met with builders and developers who echoed the experiences that I had shared in Niagara and the GTA. I also had the opportunity to meet with Premier Harris on a number of occasions when he was still the leader of the third party. He fully understood the crippling effect that development charges have on our industry and in fact felt that their use should be limited to the traditional hard services only. Mr Harris expressed this viewpoint again in a response to a questionnaire from the Greater Toronto Home Builders' Association just prior to the last provincial election.

As you will recall, in November 1995 the Minister of Municipal Affairs and Housing announced that he too believed that development charges should be used to pay for hard services only. He imposed a qualified moratorium on all development charges until a fundamental review of the Development Charges Act was conducted.

Shortly after the review was announced, I met with Terry Mundell, president of the Association of Municipalities of Ontario, where we agreed that it would be in the best interests of both of our organizations to find mutual understanding regarding the new legislation. We relayed this decision to the minister and he gave us his full support. Actually, he delayed his process in order that we might find agreement.

Over the winter months of 1995 and 1996, our two groups met several times in search of common ground that could be embraced in the legislation. Although we did find some areas of agreement, we were unable to resolve the extent and level of service that should be funded by development charges. In fact, on May 29, 1996, AMO informed the minister that "the association cannot agree to any change in the scope of services under the act," and further that they were again "not in favour of provincially regulated levels of service."

With this initiative frustrated, UDI put together its position paper and forwarded it to the government for consideration in July 1996. That paper has been included in your material and, quite simply, it represented the middle of the road. It embodied the principle of a fair sharing of the costs between new growth and the existing taxpayer and included a host of soft services that would be eligible for development charge funding — this to a minister who believed in a hard-service-only approach.

Our position paper was and continues to be endorsed by: the Greater Toronto Home Builders' Association; the Board of Trade of Metropolitan Toronto; the Toronto Real Estate Board; the Canadian Institute of Public Real Estate Companies; the Metropolitan Toronto Apartment Builders' Association; the Ontario Real Estate Association; and the Ontario Taxpayers Federation. I should say that missing from that list is the Ontario Home Builders' Association. They actually thought that our position paper was too soft.

Let me tell you what some of those groups have said in their letters of endorsement. The Toronto Real Estate

Board said: "Our endorsement of the UDI position is a departure from our traditional stand on development charges. We believe that the current financial climate faced by municipal governments requires a rethinking of the industry position which takes into account the financial ability of municipalities to deliver services to their residents. The UDI proposal has accomplished this and we commend your efforts in coming up with a reasonable compromise to the development charge issue."

The Canadian Institute of Public Real Estate Companies said it "supports the UDI statement that a new act should specifically narrow the scope of services that are funded by development charges and clearly establish more appropriate levels of service. Further, the new system should be designed so that it directs a municipality to explore new ways of delivering services, such that all taxpayers can assess the level of service that they want and are prepared to pay for."

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The Greater Toronto Home Builders' Association said, and you'll hear from them later in this process, that the "UDI position goes a long way in the spirit of compromise with the municipalities. In light of the Premier's and the minister's comments on the issue, our endorsement takes UDI's position as a bottom line, not a starting point for negotiations."

Most notably, the Ontario Taxpayers Federation said that "UDI's position is a very creative, timely and welcome contribution to the debate on municipal government funding and spending. On the whole, the UDI position paper contains a number of good ideas on reassessing who pays for what and the need to downsize services. Overall the UDI's recommendations, if implemented, should result in a lower tax burden across the board, greater government accountability, a refocusing of priority and discretionary spending and an end to the 'free lunch' concept."

In November of last year the new Development Charges Act was introduced, and there are no doubt similarities with our position paper; similarities, but at the same time a much softer approach than even we advocated. I ask you, did the government cave in to the developers, or did they listen in some ways to an organization that made rational and reasonable suggestions in light of the fiscal realities that are affecting the municipal sector and the development industry? Let's revisit the significant impacts that development charges have on levels of service, economic competitiveness and housing affordability.

Firstly, in terms of the impacts on levels of service, the current act states that the provision of services funded from development charges must be reasonably attributable to the need for those services that result from growth. In practice, however, the terms "reasonable" and "need" have been interpreted very loosely. In fact, UDI believes that the standards and levels of service have escalated dramatically in the 1980s and 1990s and are well above those that were attained in the 1960s and 1970s, which were seen to be quite appropriate for residents and businesses at that time. The existing act is so broad and so accommodating that it does not impose explicit requirements on the municipality to assess and provide

only what is needed; to establish reasonable and sustainable levels of service; to analyse the long-term cost implications of operating, maintaining and replacing all development-charge-funded services; and most importantly, to explore alternate means of financing those services.

Development charges are often seen as a way to give taxpayers municipal facilities that in many cases they would never agree to fund out of their property taxes. Monumental town halls, luxurious cultural and recreational centres and excessive levels of parkland and related facilities all represent levels of service which municipalities have been able to provide seemingly free of charge because they have been financed largely by the development community, new home buyers and new businesses. Unfortunately, the long-term cost of operating and maintaining these facilities and the impact on the existing and future taxpayer, both residential and non-residential, is often entirely overlooked.

Quite simply, once the capital is provided and the facilities built, local taxpayers will have to pay for them indefinitely from their taxes. Fewer services and more modest facilities which would comfortably serve the community's needs would be less expensive to operate, maintain and ultimately replace. The temptation to seek these services from the development community without charge is, in many cases, distorting the municipality's financial responsibilities to all of its taxpayers.

Secondly, in terms of the impact on Ontario's competitiveness, the imposition of development charges on new industrial and commercial development and the impact of this practice on Ontario's competitiveness cannot be overstated. Development charges can substantially add to the cost of investment and will continue to discourage economic development and all of the beneficial spinoffs that accompany it. In fact, here in Oakville through the recent recession a 100,000-square-foot industrial building would have triggered a combined local, regional and school board development charge of over \$600,000. This presents a major barrier to both the new business looking to relocate in Ontario and the existing business looking to expand. The expansion of the nearby Ford plant, for example, was almost lost to the United States because of this huge upfront penalty.

In contrast, many American municipalities are willing to offer industry substantial incentives to locate in their communities because they believe the benefits from employment and taxes generated in future years will more than offset their investment. Low-interest loans to assist in financing the plant's construction and extended property tax holidays to ease a business's operating costs during its early years are commonplace throughout many US markets.

In fact, serviced sites in municipal industrial parks throughout the United States are available at prices below the total amount of the development charges in many GTA municipalities. Quite simply, municipalities have concerned themselves with the development charge policies of their local neighbours only and have largely ignored the implications of unrealistically high charges on their ability to compete within the North American marketplace.

Thirdly, in terms of the impact on housing affordability, we have seen over the last five years an increasing reliance on development charges to fund municipal facilities, to the point where development charges in many municipalities are either double or triple their former lot levy rates. While the act cannot entirely be blamed for these increases, it certainly accelerated the increase in lot levies that was occurring in the late 1980s. The imposition of these unrealistically high development charges creates a huge barrier to housing affordability.

Today in the GTA the development charge represents over 10% of the cost of an average starter home, and when combined with all other government fees, taxes and charges, this cost climbs to almost 25%. Buyers of this average starter home pay approximately \$15,000 in development charges, which amounts to almost \$45,000 when amortized over 25 years as a part of a mortgage. In many other markets, the cost of the development charge actually exceeds the value of an average residential building lot, effectively preventing the land from being brought to the marketplace, despite the need for new housing and the municipality's desire to see the project proceed.

No one would suggest that if the price of bricks and mortar increased by 30% or more, the price of houses would remain unchanged, but somehow the development charge is viewed in a different light. While Ontario's construction costs remain competitive with those of other North American markets, its land costs, which include development charges, are much higher. Development charges are simply another cost in the construction of a new house, just like bricks and mortar, and they deny many Ontario families the joys of home ownership.

We believe the new act will go a considerable distance to rectifying these problems and will introduce some balance to this distorted situation. As I said at the outset, we believe it will help to control the level of municipal services, to ensure that development charges are not a barrier to economic growth, to reduce the cost of providing new construction and to improve the job creation potential of our industry.

This will be achieved, in large part, through five measures: The scope of services eligible for development charge financing will be reduced; municipalities will be forced to contribute to the cost of services which are eligible; the development charge will be calculated using a clearer, fairer methodology and will be required to provide more detailed accounting and disclosure; expansions of industrial facilities will be partially exempted from the development charge; and municipalities will be required to examine the long-term capital and operating costs of the services funded from development charges.

We support the principles on which this act is based and the majority of its content, but there are three critical areas which we believe require change. Under the new act, 90% of the growth-related capital costs for transit, waste management and electrical services may be funded from development charge revenues. However, unlike the traditional hard services such as roads, sewers and water mains, the cost of these services is difficult to apportion between growth and non-growth and can be funded more appropriately by other means. Transit serves

a broader public good, benefiting the entire population of a municipality and should be funded equally, 50-50, by the tax base and development charges.

In light of the Minister of Environment and Energy's reform of Ontario's electricity system and the potential for a fairer, more appropriate user fee system to be established to recover the cost of hydro, we believe that electrical power should be treated as an ineligible service and totally excluded from development charges. The entire cost of waste management can also be conveniently and more fairly funded through user fees, an approach which encourages reduction and reuse, and as such it should be totally excluded as a development charge service.

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As you know, UDI and the GTA mayors and regional chairs formed a task force which over the course of the last three months has met on numerous occasions to diligently bring about a resolution to the concerns of the municipal sector. This has been a valuable process and it did result in a number of areas of agreement. Our material this morning includes a summary of the outcome of these discussions and we would ask that these matters be given due consideration prior to the act's proclamation.

In conclusion, we commend the government for its leadership in advancing legislation which should bring about increased fairness and accountability to Ontario's development charge system and help to contain the cost of new housing and business. It is the result of a year-long review and offers a balance to the interests of the development industry and municipal sector.

For the municipalities to suggest that the sky is falling as a result of the new legislation is a gross overstatement. Quite the contrary, the existing Development Charges Act was a real aberration from the historic norm and triggered a drastic increase in service standards, particularly in the high-growth municipalities. The new act continues to permit development charges for a wide array of services. Most importantly, the new act requires all of us to recognize that we are far from the extravagant days of the 1980s and that we must accept the fiscal realities of the 1990s which have been made necessary by so many years of living beyond our means. The time for change has come and we encourage you to move forward with the bill, subject to those amendments we have recommended.

Thank you and we'd be happy to answer any questions you may have.

The Chair: Unfortunately, there is not time for questions, but I thank you very much for your presentation.

Mr Kaiser: We had timed it actually that there would be 10 minutes left. I guess I read a little too slowly in the presentation.

ORLANDO CORP

The Chair: The next organization to present to this committee is the Orlando Corp, Mr King. Welcome, Mr King.

Mr Philip King: Good morning. My name is Philip King. I'm senior vice-president of Orlando Corp. Orlando

Corp is a private real estate developer, builder and owner of industrial and commercial properties. Based in Mississauga, Orlando has for over 50 years been active and continues to be active in industrial and commercial development throughout the GTA.

Over the years, Orlando has managed to provide industrial and office buildings to North America's Fortune 500 companies. Orlando has been a leading voice in the industry regarding the ever-increasing costs of development and the long-term impacts such spiralling costs will have on the future of the GTA and Ontario. We strongly support this government in its attempts to reverse the trend in the continued increases in levels of service provided by municipalities and hence the cost of development charges.

Industrial and commercial growth is key to this province and the municipalities' long-term prosperity. Upfront development charges have a significant effect on business decisions to locate or expand in this province.

The car manufacturing industry is one major component of our economy and the recent expansions of Ford in Oakville and Chrysler in Brampton and the continued existence of these facilities in this province have been in jeopardy because of the significant level of development charges. Why do we provide barriers to such businesses locating in this province when the long-term benefits of municipal realty taxes and jobs are so key to our future? These barriers have to come down.

The proposed act provides for up to 50% expansion of existing industrial buildings to be exempt from development charges. This is one significant step in maintaining our businesses in this province. However, this is only one step. What about new businesses locating here? The upfront cost of locating a new business in the GTA is prohibitive.

I outline some basic statistics to indicate the seriousness of this issue:

Since 1990 — that's the inception of the Development Charges Act — there has not been one industrial plan of subdivision registered in the city of Mississauga.

In 1990, the average industrial land price was between \$300,000 and \$350,000 an acre and the 1990 levies represented 12% to 14% of the cost of land. In 1997, the average industrial land price is between \$175,000 to \$225,000 an acre and the current development charges represent between 35% to 45% of the cost of that land.

Using Mississauga as an example, the 1990 pre-Development Charges Act non-residential lot levies for city, hydro and region were around \$43,000 an acre. In 1991, which is the initial development charges bylaw, that same charge went up to \$65,571. That's a 60% increase from when the act came into place. Currently, the 1997 development charge for non-residential development in Mississauga is \$69,615. With the education development charges that have now been put in place, that goes up to \$79,000 an acre. That's a further 21% increase since 1991 and a 93% increase since 1990.

Those statistics are one major reason why new industrial growth is being prevented from coming on stream. We have to reduce this upfront cost.

We need to review how municipalities provide their services, and determine what services municipalities need

to provide to accommodate growth in the short term and long term. Roads, watermains and sewers are the traditional hard services that need to be put in place either up front or in conjunction with buildings being constructed.

The proposed act includes transit, police, fire and hydro as hard services. We request some changes in this approach. Services such as transit, recreational services, police and fire are only provided when the population or business is located and hence paying taxes. Hydro is best suited for being funded by user fees. The capital costs as a percentage of operating costs are minimal and can be easily recovered by the hydro rates. One solution to reducing the non-residential charge is to exempt the non-residential charge from all services other than the traditional hard services, ie, roads, sewers and water. Non-residential growth will still pay its fair share, but later through its taxes and not up front.

With respect to other aspects of the act dealing with residential development, we recognize that a strong residential market is needed. The jobs and need for construction materials, appliances and finishings generate industry expansion and new industries.

The government, when introducing the new legislation, stated that certain principles needed to be included: make the municipalities more accountable; bring fairness to the system; create jobs; contain the cost of new homes and businesses; and make sure development charges are not barriers to new growth. The minister stated:

"Development charges will still allow municipalities to build roads, water and sewer systems, recreational centres and libraries that new residential and businesses have the right to expect. But people who are saving to buy a new home shouldn't be expected to pick up the entire tab for gold-plated services, like museums and art galleries. Those are facilities that serve all of the residents of the community and they should all pay for them over time, when they can afford them."

The new act has cornerstones which achieve the original intent of why the act was needed. They are: averaging of the level of service over time instead of peak levels; requirements for detailed accounting of how funds are spent; provisions for investigating the long-term operations and capital replacements of new services; municipal contributions for hard and soft services through cofunding at 10% and 30%, respectively. These cornerstones must be maintained in principle to enable the act to meet its intent.

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We were part of the recent negotiations with the GTA mayors and chairs, who have agreed on numerous items as to how the act should read in its final form. We support these changes, as far as they go. We couldn't come to an agreement on one major cornerstone of the act, that being how funds are treated and the level of such funds, commonly known as cofunding.

Currently, most municipalities provide for a 5% or 10% discount to reflect the benefit of new services to existing taxpayers and the fact that the new residents and businesses will be taxpayers too. This level of discount has not stopped the continuing increase in levels of service and costs, so suggestions by municipalities that a reduced level of cofunding or discount will meet the

province's intent is not correct. History has shown us that small discounts as mentioned do not reduce costs. The 10% and 30% reductions in growth-related costs for hard and soft services set out in the act are key, and any reductions in these amounts would severely reduce the effectiveness of the act.

We need to state again what services are needed before either a homeowner or business is a resident in a municipality. They are roads, sewers and watermain. Other services, such as transit, police, fire, recreational services and libraries are services that are put in place after the homeowner or business is resident and paying the taxes. Therefore, a 30% shift in upfront costs on these services to delay payment is appropriate. The 30% reduction would be made up of contingency reductions, cost savings and then shifts to the tax base. History has shown that anything less than 30% will be lost in creative accounting and will not be effective. We repeat that hydro and waste management are best suited for user fees.

We need action now to ensure that one of this province's major economic engines is brought back to life by maintaining the affordability of houses and restoring our competitiveness in this province, and particularly the GTA. This act provides for the key services that growth needs to still be funded by growth through development, ie, roads, sewers and watermain.

We are concerned that the changes to funding of various municipal services will increase the cost of development charges. Of prime concern is transit. The removal of provincial subsidies for transit will place a challenge to how municipalities raise funds. We're extremely concerned that a very easy solution for the municipalities is to transfer the costs to development charges.

We requested the IBI Group to investigate the potential increase in the development charges if the municipalities passed on the provincial subsidy to development charges. The analysis indicated a staggering 88% increase in the non-residential charge in Mississauga. That would increase the non residential charge from \$79,000 to approximately \$150,000 per acre. To put that into perspective, for a 100,000-square-foot industrial building the total charge would increase from \$400,000 to \$750,000.

This act was meant to remove barriers to growth and help create jobs. Increases of this magnitude will shut down the non-residential development market. We compete with the US border states, where incentives are provided for industrial development. These upfront costs will severely reduce our competitiveness.

Transit is a service that is not required or provided up front. It is a service that is only required and provided when the homeowner and business are resident in that municipality. They are then taxpayers. We request that transit be shifted from the hard services category that currently under the act is funded at 90% to the discretionary or soft services to be funded at 70% or, as UDI has put forward, shared 50-50.

The services that are not provided up front will then be funded 70% by development charges, with the balance being funded through cost savings and the tax base.

Claims by the municipalities that a shift in funding to the tax base will increase municipal realty taxes is misleading. What they do not state is that the tax base is expanded by the very growth they want to charge development charges. They themselves become taxpayers when the discretionary services are actually required. Also, the act does not prevent them from collecting the funds for these services; it limits the amount and way they collect.

How can cost savings be achieved? A couple of years ago, boards of education told us that the cost of a new school would be \$120 a foot. Today they build them for about \$80 a foot. That's a 30% decrease. How did they do that? Because the province cut off the endless supply of money to the school boards.

This act makes municipalities accountable to the new taxpayers. It will make them more creative and cost-effective when their facilities are funded by the tax base. It will ensure that the services provided are really necessary and at a level that is sustainable in the long term. They will have to cut out the electronic age washrooms that reduce usage of water or require the taxpayers to pay for the increased capital cost. This is only fair because the taxpayer is the one who benefits from that saving.

This act will provide the accountability for spending development charge funds as the taxpayer ensures municipalities are accountable for spending tax dollars. Without this act, municipalities will continue to build higher levels of service with development charge funds than they do with tax dollars. We're not saying, "Don't build these services." Fund the basics from development charges and let all taxpayers, both old and new, pay for upgrades and those services that benefit all.

There's a technical issue that I'd like to bring up that is being dealt with through a committee of the GTA mayors and chairs and the development industry, and that's regarding the issue of existing agreements. We believe a deal is a deal and it works both ways. We would like this committee to recommend to the government that the provision with respect to honouring agreements is maintained in the act.

An example of the seriousness of this issue is that subdivisions that have entered into agreements and fully paid their levies as contemplated by that agreement will now be required to pay development charges as well for any remaining development. That's doublepaying. This is grossly unfair.

The final point is hospitals. This committee will hear from many hospital associations requesting that hospitals are included in this charge. Funding is a major issue, and as a company we are a major supporter of our local hospital. However, the Development Charges Act is not the vehicle for funding of hospitals. It is a provincial responsibility.

In summary, development charges increased significantly since the act came into place in 1990. Industrial charges have increased by 93% since that time. The level of service has been increased on the backs of new growth, and municipalities treat development charge funds differently from municipal tax funds.

We need controls on levels of service and costs. We agree that funding of the hard services — roads, sewers

and water — should be by development charges. All other services are not required up front.

We therefore request that this committee recommend to the government to maintain the cornerstones of the act: accountability; containing the costs and level of service; make sure the development charges are not barriers to new growth; create jobs and be fair; provide a hard-service-only list of roads, sewers and watermains; and then move transit to the discretionary services list from hard services. That discretionary list of services will now include transit, police, fire, recreational, waste and libraries, to which at least a 30% reduction should apply. We request that you exempt non-residential from the discretionary services.

Please also implement the changes agreed to by the GTA mayors and chairs and the development industry. We also request amendment of the act to ensure that agreements entered into prior to this act coming into effect would still be honoured.

I'd be pleased to answer any questions.

Ms Churley: I have a question on the long-term viability of this bill and its relationship to your industry. On page 6 you say quite categorically what you believe should be serviced under the Development Charges Act and what shouldn't. When the minister was here we had a chat about the downloading of certain services and the 40% transfer payments taken by the province from the municipalities. I think there's a very major question for your industry around long term, what it's going to mean when municipalities say, and it'll vary, "We want to raise taxes but we can't right now and we can't afford to build these vital services that the development charges used to pay for." Therefore you can't build because we cannot have communities without the possibility — or not possibility, for sure — of having some of these, like transit and police and all of that. Is that not a concern of yours?

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Mr King: We're not saying those services will not be provided. You're saying, "What is key?" What is key are roads, sewers and water. That's what's key up front.

Ms Churley: But what if the municipality, a new community, cannot afford, given their financial state and their long-term plan. Would you be open to flexibility in the bill, in that case, for special negotiations with the municipality?

Mr Hardeman: Thank you very much for your presentation, Mr King. I just quickly want to go first to the hydro. Your presentation deals with the upfront services that are required and they should be 100% on development charges. I wondered why you would suggest hydro as not required up front as one of those hard services.

The other one, if I could just put the second question, was the issue of transit. Putting it with the 70%-30%, the minister did state this morning that he was open for some suggestions on those two issues. Do you see a connection between the requirements for roads and the funding of transit? If we were to take transit out of the 100% funded or 90% funded, do you see a problem where municipalities would then require a higher level of road structure, which of course is 100% funded by development charges,

to make up for not having the ability to put transit in place?

Mr King: I'll deal with that question first. It's really, I guess, is the glass full? Or is it the last drop? What has been happening is that transit is required as the last piece of development comes on stream, while in reality everybody will benefit from transit. We recognize that transit is going to be needed. We're saying, place it where it is most effectively funded. That's not all through the development charges. Yes, get growth to pay a portion, but get the balance to be paid through the tax base when they're there because that service is not provided until after that new industry or new homeowner is there. It's not provided before they get there because it's not needed then. That's what we're saying: There's a balance of when and how the thing is funded.

With respect to hydro, in certain instances, yes, you need to provide for facilities up front, but the development industry, in developing their subdivisions, put all the cables in the ground to provide for that subdivision. The additional cost of feeder mains or feeder cables can be funded very easily through the rates and it benefits everybody, increasing the long-term grid pattern. That's of benefit to everybody.

Mr Phillips: I'm trying to get a dimension on how much your recommendations would move off the development industry and on to the property taxpayer. You mention in here about hospitals being a provincial responsibility. The government has made the decision that they are heavily a municipal responsibility for capital, because they've determined that a substantial portion of the capital has to be raised locally. That's already determined. How much do you think should be moved off the development and on to the property taxpayer?

Mr King: Again we're talking of the taxpayer. We seem to be drawing a line as to what is growth and what is a taxpayer. The new businesses and new homeowners will be taxpayers. This act does not have any say from that new taxpayer. We're saying, let some of the payment of that be shifted to later on in the process when that new resident or new business becomes a taxpayer. The tax base is then expanded and they have a say. We're not saying those facilities are not to be built. They will be built. It is how it is funded, and funded over time rather than putting these costs up front before the new business or new homeowner gets there.

The Chair: Mr King, thank you very much, on behalf of all the committee members, for taking the time to come before us this morning. We appreciate it.

Mrs Marland: Madam Chair, I think Mayor McCallion has been delayed and I would ask the indulgence of the committee because I think the next deputations, the GTA/905 Healthcare Alliance, is here. We could flip, if you wouldn't mind.

Mr Phillips: Sure. We want to hear from Hazel.

The Chair: Okay, thank you very much then.

GTA/905 HEALTHCARE ALLIANCE

The Chair: I ask for representatives from the GTA/905 Healthcare Alliance to come forward, please.

Hello. Welcome to the committee this afternoon, and if you would like to just take a moment to introduce yourselves.

Ms Virginia McLaughlin: I am chair of the GTA/905 Healthcare Alliance. My name is Virginia McLaughlin. With me today is Dr Jim Armstrong, who is executive director of the alliance. We are representing the 17 public hospitals in the regions of Durham, Halton, Peel and York that are the members of this alliance.

We formed this voluntary federation two years ago primarily to address the common issues arising from the exceptionally rapid population growth which we have been experiencing for a number of years. It is expected that this exceptional growth will continue well into the future. With our population growth currently two to three times the provincial average, approximately one half of all the growth in the province of Ontario over the next 10 years will take place in our four regions. Thus, we have a particular interest in the subject of development charges.

Currently, hospital components of development charges are not widespread across Ontario. It is primarily the larger regions experiencing significant residential growth that have decided to have such a component. Where there is a hospital component, it is not a large proportion of development charges. Generally it's \$200 to \$500 per residential unit, or approximately 3% to 5% of most development charges, which average \$4,000 to \$8,000.

For example in York region, where my hospital is located, the regional development charge is approximately \$6,000, and it includes a hospital component of only about \$200. But this relatively small amount has yielded valuable contributions to the necessary developments which have taken place in recent years in York region's hospitals.

Members of your committee from high-growth areas will be familiar with the significant increased demands that growing populations place on our hospitals. Not surprisingly, the growth in births has been paralleling the population growth. For example, population growth in York region over the past 10 years has been approximately 75%, and births at our hospitals have increased 60% in that period. To take another example, visits to the emergency department at my hospital have doubled in the past 10 years. These increases are not primarily a result of the established population going more often to emergency but rather to the increased population adding its share of health care needs. We believe adding hospital capacity to serve this increased need is appropriately funded in part by development charges on the houses that the added population purchases.

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As you know, the largest portion of hospital capital funding comes from provincial allocations through the Ministry of Health. Currently, we have the Health Services Restructuring Commission making recommendations in various locations around the province for capital expenditures as part of hospital restructuring. Under the commission's capital funding guidelines, we expect that 70% of these costs will be funded by the provincial government, with 30% left for local hospitals and communities to fund. As I am sure all of you know, hospitals

in this province have an exceptional record of successful fund-raising to support their development and services. However, the scope of development that is going to be required particularly in the high-growth areas makes it even more important now than in the past to have local government contributions.

We also believe municipal contributions are very appropriate when you consider the importance of economic development to a community. It is well recognized that community infrastructure, including in particular quality health care, is an important factor in economic development. Take for example the automotive manufacturing industry, a major economic engine of the greater Toronto area and more generally in the Ontario economy.

Wearing my economist's hat, I appreciate why auto company executives say that the location of plants in Canada has been influenced by our health care system. They note that health care is now a bigger cost of production than steel. The business case which we would put forward is that development charges for hospitals are an investment in the economic future of an area as well as in the health care needs of its citizens.

Specifically regarding the proposed legislation, we would like to see hospitals moved from the "ineligible" list in clause 2(4), to the "eligible" category in clause 5(6). You will note that police and fire stations are also in that "eligible" category. Surely hospitals are as much an essential service and merit similar eligibility.

On behalf of our 17 member hospitals and the residents of Durham, Halton, Peel and York regions, we thank the committee for this opportunity to make a presentation on this important issue. We urge you to amend Bill 98 to allow the inclusion of hospitals as necessary services eligible for development charges. We would be pleased to answer any questions you may have.

Mr Clement: First of all I want to thank Virginia and Jim, and certainly the group they represent, for being here. I want to say for the record that this group has worked with members of the caucus who reside in the GTA/905 and have been very helpful and constructive in ways to ensure that the agenda of the government moves forward, but also that we recognize some of the special needs that are facing our communities. I just wanted to put that on the record.

One of the underlying philosophies behind this particular piece of legislation is to focus the municipalities on some of the traditional expenses and charges that relate to the municipal function and ensure that there is adequate accountability for those charges that typically are shared by the community, rather than on the new home buyers.

One of the arguments I have heard in relation to this particular prohibition for hospital capital funding is that this is typically something that has ordinarily been the purview of either private donors or the provincial government, to lead the way in that particular area, so that there is an integrated and coherent way of delivering on capital construction in these new areas. That traditionally hasn't been funded out of the development charges. It's a relatively new thing probably because it's a new challenge that's been faced in the 905 area. That's the reason

why hospitals would be seen as an excluded category rather than an included category.

One thought that has been rolling around, just as we have separate education charges, and I wanted to put it to you: Is there an avenue, or is there the possibility of a mechanism, or have you had discussions with the Ministry of Health to pursue that if there is a special circumstantial need where everyone, perhaps including the public, could have a say about whether they wanted to include this as part of a development charge or a property tax or what have you, that would move to the Ministry of Health just as the Ministry of Education has a lot to say about education development charges?

Is that perhaps part of the way we can ensure that municipalities are not directly involved in things they traditionally aren't involved with but that there is a way to recognize that special circumstances might occur as well?

Ms McLaughlin: I can honestly say we haven't had discussions along those lines. Traditionally, hospitals were funded two thirds-one third, with two thirds coming from the province and one third coming from the local community, and in the case of regions such as my own, York, and also Peel and Halton where there are development charges, the regional municipality funded a portion of that one third — certainly, generally speaking, not the whole one third but a portion of that because it was seen to meet the needs of that new and growing population.

I think it's fair to say that at least in the hospital sector, those guidelines have been observed. The only thing that was eligible for development charges usage was growth in existing programs for the new population. The examples we have used are emergency and obstetrics because it's so clear because that those are a result of growing populations. There may certainly be other ways of insuring that the capital is in place, but I must say we haven't looked to the ministry for special discussions on that.

The Chair: Mr O'Toole, one minute.

Mr John O'Toole (Durham East): No, my question has been asked.

The Speaker: The official opposition?

Mr Phillips: I appreciate your being here. I think probably all of us have been involved in — I used to be chairman of a hospital board and involved in fund-raising for expansion, scraping around for money. You have indicated 30% of the future capital. I think that is a little bit problematic; it may be 30% or it may be 50% that you have to raise, depending on the interpretation.

Ms McLaughlin: That's right.

Mr Phillips: But there is zero doubt that in Halton and Peel and, I guess, Durham there will be substantial needs in the next few years for capital.

Ms McLaughlin: In York too, all four regions.

Mr Phillips: Yes, all four. Can you give us some indication of how much total money the hospitals anticipate they'll need for capital over the next five or six or 10 years and what percentage of it is currently being raised by development charges? Have you any indication or any idea on that?

Dr James Armstrong: It is very difficult. Of course, with the restructuring commission coming, we expect to

get a better indication of what they estimate will be the development requirements. Each of the areas has been, over time, looking at plans. In Durham and York region there are acute care studies that were conducted, and the York region one did estimate somewhat the requirements, but not a complete estimate over that kind of time period. So it's very difficult to answer that. We'd be in a better position after the commission has reported.

Mr Phillips: I'm just trying to get a feel for the total amount that's going to have to be raised and what is reasonable under the current development charges, because I gather under the proposed bill you essentially will not be permitted any development charges.

Ms McLaughlin: That's right. It will be zero. In York region it's my recollection that the acute care study identified \$75 million worth of capital that would need to be invested in two of the three hospitals, because one is a new facility. But in the two older facilities, in order to help them meet the needs of this growing population, that's the total bill and a portion of that would come from provincial moneys. That amount is unclear — it may be 50%, it may be 70% — because it is tied up in the restructuring commission. The balance would have to come from the communities themselves ie, fund raising, major capital campaigns and or the regional level of government from development charges.

Mr Phillips: It might be helpful for our committee if your group had just a ballpark figure. I'm just trying to visualize in my mind how much money you're going to have to raise over the next 10 years and how much reasonably would come from development charges that have to be raised some other way.

Ms McLaughlin: I'm sure we could provide you with that information.

Dr Armstrong: We could do a gross estimate. Certainly in Durham, when we did a preliminary analysis in discussions with the regional government there last year, it was a similar order of magnitude to what was just —
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Mr Phillips: Seventy million?

Dr Armstrong: Yes. If you extrapolate that across the whole 905 area, you might be looking at something like \$300 million, which sounds like a lot, but even just for the restructuring in Metro Toronto, \$150 million was identified as the immediate kind of restructuring requirement, and the system is of course more developed in Metro at this point than in 905.

Mr Phillips: So maybe \$100 million would have to be raised locally, of the \$300 million, roughly?

Dr Armstrong: You're looking at a pretty substantial challenge in terms of the historic fund-raising levels that we've had.

Ms Churley: Thank you for your presentation. Before I get on to hospitals, I want to thank you for bringing up a point that I was thinking about earlier but didn't have time to raise when others were presenting, and that is, on page 4 you say you appreciate why auto company executives say the location of plants has been influenced by the health care system. It's a very important point to make because so far, and there are two sides to these issues, we have heard from some of the developer industries the

case that some business has not been building here because of the high fees attached.

I certainly would be interested to see some kind of case study because I'm sure — I'm not denying that there are examples on both sides, but we must bear that fact in mind as well and try to find the right balance there. Of course, my concern about this bill is that it tips way over to the other side of that and our communities are going to be hurt, which gets me back to your point about hospitals.

If we have a situation where municipalities do not feel that they can raise taxes more, which is becoming the trend, especially with governments now starting to reduce taxes, and more and more services are being downloaded, including health care and long-term care, on to municipalities, and communities like yours are expanding and new communities are being built, isn't there a concern that at a certain point a municipality like yours is going to have to start saying no to new development? In a couple of circumstances in Toronto, when I was around Toronto city council, school boards and residents were saying no to much-needed new social housing in the area because they were unable to afford to build new schools and things like that. Isn't that also, on the other side of the coin, a concern that could detract from new development, if you don't have these good services or the ability to expand these services for expanding communities?

Ms McLaughlin: I would suggest that when a business is looking at a place to invest, they look at the whole picture. They look at the availability of an educated workforce, they look at costs like land, servicing, health care, the cost of health care. As you know, the cost of health care in Canada is relatively attractive compared to that in the States for businesses, and that's one reason that Canada becomes attractive. This is really the argument we were referring to.

People, when they want to move into a community, are also looking for things like schools, parks, libraries, fire and health care, and hospitals are a major component of health care and the provision of health care. So I would say the whole thing is an entity and you really can't have one without the other. You need the services and you need the people, and the people look for the services and business looks for the services, and when they're there, you have a healthy economy.

Ms Churley: Thank you for that. In answer to my question, my concern again is, if we want more growth because it helps the economy and all of the reasons that go with that, and you're talking about your expanding community, what if there is no money, given all of the changes, to expand these hospitals and to build new schools and that sort of thing? What is going to happen to new development? At some point, is the municipality going to say, "I'm sorry, you can't build here because we can't afford to give you the services?" At a certain point hospitals can only serve so many people, right?

Ms McLaughlin: That's right. But I really can't speak for the municipalities. They have to make their own decisions based on all of the pressures and all of the things they're facing. As hospitals, our job is to provide for the needs of those residents and we do it in the very best way we can. Given the challenges we have, we get

on with the job of doing it, making people aware of the challenges so they can hopefully, especially the funders, meet our needs. But our job is to meet the needs of our community from a health care point of view.

The Chair: Ms McLaughlin, Dr. Armstrong, thank you very much for taking the time to present to the committee this morning. We appreciate your best advice.

GTA MAYORS AND REGIONAL CHAIRS

The Chair: We'd now like to hear from the GTA mayors and regional chairs group please.

Mrs Hazel McCallion: Thank you very much. We are very delighted that we've had the opportunity to come. I'd like to call on Ann Mulvale, the mayor of Oakville, who is the co-chair of the task force set up by the greater Toronto area mayors and regional chairs to deal with this. We appreciated the agreement of the minister to extend the time as well as to recognize our team of Mayor Cousens, Mayor Mulvale, myself and our staff to do the negotiations with the Urban Development Institute. I'll call on Ann to make a few opening remarks.

Mrs Ann Mulvale: Thank you Mayor Hazel, Madam Chairman, members of the committee. As the minister announced this morning, we have been involved in negotiations with the development community on behalf of the municipalities, working closely with the province, and we support the amendment he announced today on the 10% withdrawal from the deduction for hards. We support it wholeheartedly.

We support the gross to paid share, we support the need to recognize there are some benefits to growth and that some benefits flow to existing residents. That's why before we reach that number we have already discounted for that growth.

We support many of the statements that have been made, and the library handed it very well in terms of the state of the housing market. When this legislation was envisaged, as it has already been said, Mike Harris was the leader of the third party and the market was very different. I won't try and reiterate the reference points that have been made by the library delegation. The deputy mayor of London, Grant Hopcroft, both in that capacity and in his negotiating role on behalf of the association of municipalities, made a very strong case as to why the local ability to make decisions is paramount. We endorse that.

Indeed, the very topic, the very name of your act, "An Act to promote job creation and increased municipal accountability..." does not fly, in Grant Hopcroft's submission, at all. Municipal ability to make local decisions gives us greater flexibility, enshrines that flexibility to ensure that we work as partners with the intent of the legislation.

I was pleased to see Phil King make early indication of the negotiations and success of those negotiations between the GTA mayors and regional chairs group and the development sector and the province. It is regrettable that Stephen Kaiser, despite his historic journey, almost alluded to it as an afterthought, because we have made substantive progress, which the minister has acknowledged today, by taking away the 10% of hard services.

We believe very strongly that further clarifications and further amendments are necessary, and Mayor Hazel, on behalf of the mayors in the GTA, will be speaking specifically to that. There are outstanding issues. Much has been mentioned by at least two, if not three, speakers on the impact of industrial growth. We have made those changes already, and that is why it is regrettable that UDI didn't speak up front to the changes that have been made.

To look at the cost of housing in isolation without looking at customer-driven changes in evolution — from the journey that Stephen started as a student, much has changed with the sorts of things customers want as well. Of course, municipal costs are not just what drive the cost of housing. The province has the ability to change sales tax on building projects, on GST. There are all sorts of changes that have taken place, so to have a historic journey, no matter how charming, without anchoring in that environment of change and all those other impacts, really is not terribly helpful to this committee. I personally regret that his time allotment wasn't handled so that you could ask him some questions, because I think you'd have some very good questions of him.

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To say as he did at the end that it's erroneous for us to say the sky is falling — it was a gross overstatement? Well, my friends, my political colleagues, it's a gross overstatement to say that DCs and municipalities are the only problem that the housing industry has. We have the hottest housing market, as I believe by submission of the library person, since 1988. We have the lowest interest rates in 30 years. We have the tradespeople back working.

Our job is to continue the partnership, the success that has taken place with the negotiations to date under the umbrella of the GTA mayors and regional chairs, as witnessed by the amendment already put, and to continue to amend this legislation so it serves all the people of Ontario, whether they be on the business side or the residential side and not in any way to distract from the momentum that's there. That's the challenge. The municipalities are part of the solution; we are not the problem.

To position where we stand today, Mayor Hazel will now take over the podium.

Mrs McCallion: We have provided for you today a letter with attachments which outlines the position of the GTA mayors and regional chairs on this very important subject. That position was unanimous at the meeting on Friday, held in Brampton.

The Chair: Excuse me. Just if I can interrupt for a moment, it's been asked that it be distributed at the end of the presentation, so that will be coming.

Mrs McCallion: Yes. The issue of development charges legislation, which is permissive legislation — I want to emphasize that. You don't have to charge them if you don't want to, and you can play around with them if you don't wish to. In other words, you can reduce them from what is established by the legislation or you can eliminate them for industrial-commercial, as some have done, and reduce them for residential. That's permissive, and we've been asking for permissive legislation in this province for years to give us the ability to make the decisions.

It is critical to the future of our communities as we try to provide the services that our communities, both yours and mine, have come to expect from living in this great province. The bill that is before you today proposes to change what for years has been a very good piece of legislation. It has given many of our new communities the services, both hard and soft, that we need in order to continue to meet the needs of our new residents. I would again add that these residents are as much residents of our province as they are of our cities. What we do today and what you recommend will have a significant impact on the future development of towns and cities. It will also have a tremendous impact on the taxes that our residents pay.

The original premise of the development charge legislation was very simple: New development would pay for itself. The new bill proposed to change that basic premise and pass part of the costs of the new development on to the taxpayer in general. We strongly object to this change. The bill calls for a cofunding arrangement for new development in the future. Under the proposals contained in the bill, hard services would be funded 10% from the property tax and soft service would be funded 30%.

This morning the minister made the changes. We are pleased to learn that this morning the minister has announced the elimination of the 10% for hard services, excepting transit and waste. For the latter two, he is awaiting the outcome from these hearings, so you can rest assured we have a suggestion to make.

We also strongly believe that the 30% funding of soft services from the property tax must also be eliminated. If not, what this means is that regardless of how efficient we become in planning, scheduling and tendering our new road services and community centres, this bill will force the older neighbourhoods to pay a portion of the cost. That's why I think the minister has made that change. He realizes that on the hard services they would be forced to pay part of the capital cost of the expansion.

If Oakville had collected development charges for a new community centre in the amount of \$2 million and, through the proper staging and timing of the tender and detailed review of the cost, the tender came in at \$1.5 million, this would still force the taxpayers to pay 30% of the cost even though it is already 25% less than what was budgeted.

This is the cofunding issue that I'm sure is understood completely by all those who have been dealing with it. We have found even in the municipalities that cofunding had to be explained. I don't know who came up with the idea; it was a great idea on behalf of the development industry.

We are told by UDI that the reason they support cofunding is because it will force the local politicians to think twice before they proceed to develop these facilities. Well, we think a lot already before we do things, and I want to say that local government in this province and in the country has a much better record financially than either the provincial or the federal governments, and I think we should say that. Sometimes people don't really appreciate that our record is much better than the provinces, and I'm speaking of all provinces, and the federal

government. We think a lot already before we do things. I think we're noted for it.

Part of what makes communities whole is the public. Can you imagine what the reaction there would be if we told a new community that was 80% built out that we could not build a community centre for their children because we could not afford it? New families move to these communities because of how we plan the community and integrate the amenities. The developers use these amenities to sell their homes — they do it in Mississauga, I can assure you — and yet now they want to take them away. The local councils are elected to make those decisions, not UDI.

We have worked very hard over the past two months to attempt to arrive at a consensus position on this legislation. We have met many times with UDI in an attempt to reach agreement on many points in the legislation, and we have indeed reached agreement on 20 issues. It is, however, these final issues that are most important to us, even when UDI landed things on the table at the last minute, like farm assessment. Secondly, they want us to deal with hydro. As you know, hydro is the responsibility of hydro commissions and not our responsibility as municipalities. If we are forced to use existing tax dollars to fund new development, then we fear we will not be able to properly serve our residents.

This government is in the process of making tremendous changes to the way they fund municipalities. Our traditional sources of subsidy and grants are being eliminated. Generally, we support these changes because you have promised to replace the lost revenue with opportunities that will allow us to operate more like a business and raise funds from sources from which we were previously restricted.

What this legislation does is remove one of our existing sources of revenue. We cannot work with reduced revenues from the province and at the same time be expected to pass the cost of new development on to our existing taxpayers. We need every cent we can get our hands on just to pay the cost of keeping the existing infrastructure in place. Siphoning off these much-needed dollars to pay for the new development just doesn't make common sense.

Madam Chair, I hope you and the members of your committee will amend the legislation to ensure that the taxpayers of this province do not have to do without and do not have to pay the cost of providing those community services that we all take so much for granted. We will work with less, but we cannot accept placing the costs of development on the existing tax bill. Developments simply will not proceed because we will not be able to afford it. All of the resources that we have at our disposal are needed to keep our existing communities safe and healthy. New development must pay for itself.

The question I ask the committee is, if the province is going to legislate a reduction in the levies, how will you guarantee it will be passed on to the new homeowner? Are you going to legislate the price of houses? That's the only way it can be done. The market determines the price of houses. Are you going to legislate what amenities go into a house? The builders are advertising three bathrooms, a fireplace in every bedroom, a finished basement,

a sauna, a pool in the backyard. Are you going to say those things are not permissible because they increase the price of houses?

I've rushed through this in order to allow you to ask questions as we would appreciate questions as to how we can solve the problem that, in my opinion, is permissive legislation, and I want to emphasize that. Why does the province want to regulate and take away from us that right they granted us?

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Mr Phillips: I appreciate the advice of the mayors — the well-regarded mayors, I might say. This morning the minister said that he expects the price of a house to drop \$5,000 as a result of the legislation. I'm just trying to get from you — and I think in your last moment you indicated — if this bill goes through, what will it mean to development in Oakville or Mississauga? What do you think the impact might be on future development?

Mrs McCallion: I think our position is very clear. As you know, we've led the greater Toronto area and led Ontario in development as a city. I can assure you that when we froze development the first time the legislation came out, our phones were full, both council and mayor, of calls saying, "Thank God you've finally wakened up and are stopping development in Mississauga," because we have taken a lot of development and the citizens are concerned with the traffic situation; more are they concerned with the lack of school accommodation. There isn't a school built in Mississauga the day it opens that there aren't portables on the site because of the lack of funding of the provincial government over the years — not this government — for schools in growth areas of this province.

I can assure you that a freeze on development would be warmly welcomed in Mississauga. My council doesn't want to do that because we really believe we want to create jobs and we really believe that we want to create the necessary mix of housing for the industry we're also attracting to our city, so we hope that the province will not place us in that position.

Ms Churley: Thank you to both of you. In a very short time you gave a very good presentation. Some of the points were made earlier when the minister was here and unfortunately we did not get clear answers on those. The point about the guarantee about the housing prices going down accordingly was one that I raised as well. There is no guarantee, of course.

I wanted to ask you, would you prefer to have this bill withdrawn and to go back to the existing Development Charges Act with perhaps some amendments, or do you see some possibilities within this new bill with amendments? Where would you like us to go from here?

Mrs McCallion: First of all, as you know, I was on the Who Does What panel and so was Grant Hopcroft. We dealt with the development levies and recommended to the province they leave them alone. That was our recommendation.

Ms Churley: Why do you think they are doing this, in that case?

Mrs McCallion: I believe it was a pre-election promise. On the front page of their last bulletin, Mr Kaiser of UDI quoted the Premier as saying that there should only

be development levies on hard services. Obviously there were discussions with UDI before the election and I believe that was the situation.

Ms Churley: Do you know of any others?

The Chair: I'm sorry. We'll go on to Mrs Marland.

Mrs Marland: Mayor McCallion, another thing that Mr Kaiser said this morning was that he wanted to destroy or dispel the myth that still exists in the minds of some people that this legislation is a gift to the development industry. Then of course he went on to reconfirm his previous statements about development charges being used for monumental town halls, luxurious cultural and recreational centres and excessive levels of parkland and related facilities. I know how long you've had a real concern about some of Mr Kaiser's misleading statements, particularly about the Mississauga town hall.

Do you think the answer to some of these problems, if UDI wants to destroy the myth, would be for the municipalities to be more willing — I know Mississauga has a full open-book policy on where the charges are raised and where they're spent. Do you think that it has to be better managed, either through this legislation or regulation, how municipalities raise their charges and how they spend them in a public way?

Mrs McCallion: Yes. That came up at the Who Does What panel. The representative of the Minister of Finance said there are municipalities that have been reported to them by UDI that do not follow the legislation. In my opinion, that can be corrected by the province if they're not following the legislation. If there's any lack of clarity in the legislation, let's clarify it; I agree. I have no problem with it being legislated that we open our books to the developers; no problem at all.

But I want to clarify one thing — and I'm glad you raised it — and that is yes, Mr Kaiser has publicized that development levies were used to build our city hall, our civic centre in Mississauga. That is a completely false statement. Even though he was prepared to tell me that he would get a former employee of the city of Mississauga to sign an affidavit that they were used, I have never seen the affidavit and we've even written a legal letter to Mr Kaiser to withdraw the statement.

There are a lot of myths out there and a lot of false impressions, but if a municipality doesn't follow the Assessment Act and it doesn't follow the Municipal Act, I can assure you the province should take action on them.

In answer to your question, which I don't think I answered, we are prepared — there are municipalities that may be building facilities that may need some control. That to me is a case of sitting down with the developers in their respective community and discussing that issue with them as we do on all our building codes etc with the committee in Mississauga. We bring the home builders in. All these things can be determined.

The only reason that the development industry supports the hard services — and I'm sure they will not object even to Mr Leach's statement — is that you can't build a subdivision unless you have the pipes in the ground, but you can build a subdivision and bring in 30,000 or 40,000 people and have no place for the kids to play ball, to swim or to go to a library. You can do that, but you need the water and you need the sewers and the roads.

We take exception that transit is going out of the hard services, and I'll tell you why. You, the province, have just announced that we're going to be responsible for GO Transit. Now isn't that great? We haven't the slightest idea what the capital costs of expanding GO Transit are. That came up at the last minute by UDI, to drop transit, after the government made the announcement that we would be possibly taking over GO Transit.

The Chair: Mayor McCallion, I'm sorry to interrupt. Thank you very much for taking the time to come before us this morning. Mayor Mulvale, we also appreciate your taking the time to come as well and particularly for the hospitality exhibited to us here in Oakville today.

Mrs McCallion: Madam Chair, I just want you to know that this is the unanimous position of the mayors and the regional chairs. I also have a slight idea what they may do. I don't want to threaten, but I'll tell you I'm concerned because I think we've got the economy going in this greater Toronto area and I don't think we should be interfering with getting it back on track.

The Chair: Thank you, mayors.

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PEEL REGION HOSPITALS

The Chair: Our final group this morning is representatives from the Peel region hospitals. Hello. Welcome to our committee today. Please introduce yourself for Hansard and for the members of the committee as well.

Mr Richard Dixon: Good afternoon. My name is Richard Dixon and I'm vice-president of the Mississauga Hospital. Scheduled to be with me here today was Janice MacNeill from Peel Memorial, and she is unable to be here now. I should also add that our president and CEOs are attending an important growth funding meeting in downtown Toronto.

The hospitals of Peel region — Peel Memorial, Credit Valley and Mississauga Hospital — are very pleased to present to the committee today concerning the very important matter of the future development charges in our hospitals. The population of Peel has grown in leaps in bounds in the last 10 years to the current population of almost 800,000, with a real expectation of reaching the one million mark within four years. This overwhelming population growth has made the provision of health services very challenging.

Let me quote some interesting statistics from the Fraser Institute of January 1997: GTA/905 people wait 20% longer for elective surgery than in Toronto; they wait 27% to 150% longer for diagnostic testing than in Toronto; and the GTA/905 has over 50% of the population, yet only receives 27.7% of the health funding.

Also, in a survey in October 1996 by the Angus Reid Group the following key points were found. People travel to Toronto for health services because of three significant issues: Their specialists are in Toronto; the facilities and equipment are perceived to be better in Toronto, which is a part of my rationale for making this presentation today; and the unavailability of some hospital services in the GTA/905 area.

The Health Services Restructuring Commission in Metro Toronto has just released its report, with millions

of dollars being allocated for capital projects as the enabler to the change in health care delivery. The commission is now turning its attention to the hospitals in the GTA/905 area, which include York, Durham, Halton and Peel. Their report, expected later this spring, may also identify numerous capital projects for our hospitals. Under the commission's capital funding guidelines, the provincial government will fund 70% while the local hospital and community fund 30%. Hospitals in the Peel area will be expected, along with their communities, to provide capital funding to improve their health facilities and provide new and/or replacement equipment. The sources of the local funding are from three principal sources: development charges, hospital capital reserve funds and fund-raising.

Development charges are a fair and equitable mechanism for capital funds to be provided for hospital capital projects. Peel region has had a process in place through lot levies dating back to 1974, with substantial investments being made in all three Peel hospitals. Currently the Credit Valley Hospital is investing development charge funding to expand their emergency, diagnostic imaging, ambulatory and laboratory services. The Mississauga Hospital has just used a portion of its development charge funds for the installation of the region's first magnetic resonance imaging unit and completely redeveloping a rapid response lab and installing a state-of-the-art angiography unit. Peel Memorial is just about to expand its obstetrical and special care, ambulatory care and renal dialysis services. In Peel, development charges are being put to good use for the people in our community.

Development charges for a municipal residence building, excluding educational development charges, in a region such as Peel would be approximately \$5,000, with the hospital portion being only \$540. By removing such a nominal sum from the cost of home building, it is extremely doubtful that this will encourage more home purchasing. The hospital component of municipal and educational development charges are only 5% to 7% of the total charge. Also, there is no guarantee from the Urban Development Institute that this cost reduction will be passed on to the consumer.

Development charges for hospitals are a small portion of the total charge, yet yield great improvements to the delivery of care in our hospitals.

Hospital capital reserve funds will be required to match the growing population demands as well as the imposed capital projects from the Health Services Restructuring Commission, and these are limited.

Fund-raising is extremely competitive. Hospital foundations concentrate their efforts on raising money for capital equipment such as MRI. It is difficult for the same fund-raisers to be knocking on corporate and community doors for bricks and mortar.

Several members of this standing committee represent communities in the GTA/905 area and know how important hospitals are to the public we jointly serve. Under Bill 98, hospitals are excluded from development charges and in the same ineligible category as museums, theatres and tourist facilities, while the government has given a higher priority to fitness centres, swimming pools and baseball diamonds, as well as police and fire stations.

Even lawnmowers are included in development charges for recreational centres, while basic lifesaving components of a hospital are excluded.

Surely committee members and the public believe that hospitals are as important as the police and fire departments. Hospitals are where our children are born, where our friends receive lifesaving services in emergency and where our relatives receive necessary health and wellness services. At the same time, emergencies and obstetrical units are faced with significantly higher demands due to the increased population growth in Peel region. The emergency departments in Peel hospitals service approximately 200,000 visits annually, with nearly 11,000 births in our obstetrical departments.

The members of this standing committee on resources development should also be aware of the linkage between hospitals and the economic development in Peel. The region of Peel boasts some of Canada's most prominent companies: Northern Telecom, Spar Aerospace, Nissan Canada and Baxter Corp. These companies have obviously located in our community because we provide a skilled workforce that is supported by high-quality, low-cost health care. This is an extremely significant point, as a healthy worker is obviously more productive than a worker who cannot access the local hospital physiotherapy department.

Hospitals need the investment of development charges to support the transition of care from inpatient to ambulatory services, improvements in medical technology and the basic infrastructure enablers. For example, a gall-bladder removal five years ago involved an invasive operative procedure with a stay in an inpatient unit for up to 14 days. Today this is a day surgery procedure. The change in process requires less inpatient and more day surgery space and equipment. It is brought to reality through capital investments, which involve development charges, the outcome being improved quality to the patient, with a lower operating cost for the hospital and the taxpayer.

The region of Peel and the three hospitals in Peel have recently reviewed the development charge methodologies. The result was a very successful process of allocating the current and future funds through a detailed set of guidelines, which are a model for the rest of Ontario: All funds are to be linked to population growth and not a ratio of beds per population; growth is linked to a past recognition of population plus future increases; projects must have Ministry of Health and district health council approval; capital funding is first sought from the Ministry of Health; growth component could be up to 100% or a variation, depending if a service is provided on a regional basis; non-growth projects funded only by the hospital and the Ministry of Health; projects in approved region of Peel list have been evaluated by a third party. We are pleased to share these guidelines with this committee.

On January 15, 1997, the region of Peel council passed a motion supporting the development charges guidelines, that future funding be supported in high-growth municipalities, and they supported our issues in the GTA mayors and regional chairs forums as well as with the Ontario Hospital Association.

The hospitals in Peel region strongly believe in the need to change the Development Charges Act, but it is essential for hospitals to be included under these key provisions: local decision-making by regions and municipalities; development charges applicable for hospitals at 100% cost recovery; hospital projects submitted to Ministry of Health and district health council for approval; hospitals eligible for up to 100% growth component of capital projects.

On behalf of our patients, community, staff, physicians, volunteers and boards of the hospitals of Peel region, we wish to thank the committee for the opportunity to present this important issue. We urge you to support the inclusion of hospitals as necessary services in Bill 98. Thank you very much.

1300

Ms Churley: Thank you for your presentation. We need to get a commitment from the government soon that this will be amended, if nothing else. I believe this is going to blow up in the government's face, given all the other issues out there now around hospital closures, that even within this bill it's not seen as important enough to leave in. I think that's something that the faster we're told it's going to be included, the better off we'll be because, just as the mayors were saying earlier, people who have kids are not going to move into a community if there are no schools or community centres or places to play.

My father, who is getting elderly, just had his second heart attack, and probably my parents are going to have to move out of their home. I can assure you that when they're looking for a place to go from here, the hospital and availability of hospital and health care are going to be the number one priority. In growing communities, if that kind of guarantee is not there, and I speak again to the development industry, it's cutting its own throat in the long future because people are not going to want to move into communities unless those kinds of amenities are there.

I know I've given a speech. I guess I'm just backing up what you were saying so very well, that we must include hospitals in our community planning or the communities will be unworkable.

Mr Dixon: Thank you. Hospitals are a part of the community. Any other questions?

Mr Galt: Thank you for your presentation. Certainly I also recognize the tremendous importance of hospitals that you've expressed. Just thinking in terms of rural Ontario, where there's a very large number of municipalities that would be served by a local hospital, how would you propose that they would look after development charges for a local hospital and then for a referral hospital that may be off in the distance, such as in Toronto? How would they divvy that up? Do you see that this would be practical?

Mr Dixon: From the discussions in our very positive process with the region of Peel, I think we are quite open to redefining the context of hospitals to include health services, so in a rural community, and our example is in Caledon, where there is not a hospital in Caledon although they are served from outlying hospitals — there are and can be services that can be available to them, not

the formal hospital but hospital or health services in the world of integrated delivery services — that those other services in that provision of health be included in development charges. We are with you on that point. Health care is more than hospitals.

Mr Clement: Thank you, Mr Dixon, for being here. A lot of your presentation related to how to grapple with massive growth in the regions and how to grapple with that in the context of health care. I just wanted to say for the record, of course you're well aware the government of Ontario has changed the JPPC funding formula to recognize future growth in our regions because of the priority for the delivery of better health care for our area. The hospital restructuring commission's report, I think the minister has already indicated that he's looking at it from a GTA-wide point of view so that some resources perhaps could go into areas where they are needed.

The question is how to pay for that growth. Are you saying, quite apart from the changes I've just outlined, that there's a need to specifically pay for that growth through the development charge? Is that what you're saying, that there's no way to deal with this particular item other than through the development charge?

Mr Dixon: Development charges only form one part of the process. I mentioned earlier that fund-raising can be a part of that, hospital reserve funds can be a part of that. I happen to be part of a hospital that does have reserve funds. But the majority of hospitals in Ontario do not have reserve funds and that will be further eroded by the imposed hospital restructuring in nominated capital projects.

The ability to go elsewhere, as UDI have also proposed to us, is to have user fees in hospitals so that they would pay for part of the development. That's completely unacceptable to us, to the public, and contrary to the Canada Health Act.

We have explored with our association and with our other stakeholders the other mechanisms for capital funding, but I highlight that development charges — we are not looking solely to that source for all our funding. Some hospitals do have other funding mechanisms.

Mr Clement: Just one final quick question. I didn't see any reference in your paper about the current state in Peel of the impact of the development charges. Did you want to state for the record how much is reserved already in Peel?

Mr Dixon: I stated earlier that our process in Peel goes back to 1974, and to date approximately \$60 million has been collected. We have undergone a process of allocating that between growth-related projects to our hospitals. In our hospital case we have about \$60 million ourselves in proposed projects within allocation from development charges of approximately \$24 million. That still leaves in excess of \$36 million, the far majority of that balance, that the hospital would have to fund itself, and that will be extremely difficult for us to do.

Mr Sergio: Thank you very much for coming and making a presentation to our committee. You have mentioned that the provision of health care and stuff like that is one of the essential services that local municipalities currently provide. With the restructuring that is going on now we may have health care provision,

hospitals all unloaded on the shoulders of the local municipalities. Do you believe that it should be the local municipality then saying where and how much money they are going to expend, let's say, to make provision for those local services? I believe that health care, hospitals, fire and police are all essential services that should be there prior to any new development being built. Can we have your comments on this?

Mr Dixon: Yes. I'll see if I understand your question correctly. We believe firmly, as do mayors Mulvale and McCallion, that growth provides the incentive to expand. It's absolutely essential in our component that that take place because, just to try to re-answer the earlier question too, the availability of other capital funds is extremely limited. There is not in other parts of Ontario growth taking place, and if they don't have any growth, they shouldn't have any large rationale for changing their health care facilities. If we look at the growth that's taken place in the past in Peel plus our future growth, it is exceedingly high. So we're trying to provide, within the context of almost one million people in the next four years, health services and hospital care with only three hospitals.

Mr Sergio: Instead of having one blanket law, for example, as is being proposed, you believe it should be left up to the local municipality or community to decide what and how they should be provided.

Mr Dixon: Right. That is actually part of the formal motion that was passed by the region of Peel, that that jurisdiction be left up to the local municipalities to decide, if they want to do it and how much they would like to do that with.

The Chair: Thank you very much, Mr Dixon. We appreciate your taking the time to come before the committee this morning with your presentation. We'll listen intently to your good advice.

Mr Dixon: Thank you very much.

The Chair: This committee stands recessed until 2:10 here this afternoon.

The committee recessed from 1308 to 1416.

C.N. WATSON AND ASSOCIATES LTD

The Chair: I call to order the afternoon session of the first day of hearings on Bill 98, the Development Charges Act. The first presenter is from C.N. Watson and Associates Ltd. Welcome, Mr Watson. You have 20 minutes to present. It must include either your presentation and/or questions from caucus members.

Mr Cameron Watson: Thank you very much. We appreciate the opportunity to say a few things to you this afternoon. I guess we are saying it on the basis of the experience that we've had over the last 10 or 15 years with development charges and lot levies, and the first page of our submission talks about that experience.

I won't bore you with it but I will just say that we have over the last number of years carried out about 50 studies on behalf of land owners, fiscal impact studies and land market studies, and on behalf of 250 municipalities, utilities and school boards we've carried out development charges studies or similar studies. Most of the

work in the GTA and across the province we have been involved with, so we have a perspective.

I will start by saying that obviously Bill 98 represents a substantial rewrite of the existing act. I think it does clarify and tidy up a number of problems with the existing act and I think that is good. I mention at the top of page 2 a number of sections that I would cite as examples. I guess there are a number of problem areas, but there are three problem areas I'd like to talk to you about, in my view. They relate to: first of all, the calculation of the charge; secondly, the municipal contribution; thirdly, the reserve fund draws. Finally, I just have a few comments on matters that have been raised relative to the purpose of the legislation.

On page 3, in terms of the calculation of the charge, as you are well aware, the nine steps are set out in subsection 5(1) of Bill 98 and what I want to speak about first of all are paragraphs 3 and 5.

Paragraph 3 says that the increased need must not result in the level of service in the calculation exceeding the previous 10-year service level average. That's fine, I guess. I think it was necessary to make a change to the service level test in the existing act.

The first concern I have is in situations where there has been a provincially mandated increase in the level of service during the last 10 years. I would use storm drainage as an example, where you have stormwater treatment required which you didn't have required 10 years ago. It seems to me that the 10-year service level average is meaningless if what the municipality has to put in place is a current-day standard as mandated by the province. I don't see anything in the regulations that deals with that. It's in the regulations of the existing act, but somehow or other it has not been carried through.

I then go to paragraph 5 in relation to paragraph 3. Paragraph 5 says that the increased need must be reduced to the extent that the increase in service involved would benefit existing development. That's fine, that's clear and that's what's been done to date. If that means that the increased need is established as being, say, 100,000 square feet of some facility and the municipality decides it's going to build 110,000 square feet, then you have to net off the 10,000 square feet because that's going to take the municipality beyond the 10-year service level average and therefore it's a benefit to existing development. We have no problem with that interpretation.

However, if that is not the correct interpretation and if what is meant by these words is that when the municipality builds the 100,000 square feet, if there is going to be any use of those facilities by existing residents, then you've got to net that off the cost, then I suggest we have a problem because, particularly with soft services, you have existing residents using new facilities, you have new residents using existing facilities throughout the municipality; you can't segregate these things. As long as the municipality has not acted so as to augment the 10-year service level average, then there isn't any benefit, I suggest, to existing development. Even though the new facilities may have some degree of joint use, there is no benefit to new development and there should be no net-off. I just want to make sure that's what the words mean

because it seems to me that's not necessarily what they say.

The second area of concern relates to uncommitted excess capacity. We now, as of this morning, have the definition of uncommitted excess capacity, if that helps. The questions I have are at the bottom of page 4. The first question is, how is non-debt financing of excess capacity to be cost-shared? In other words, a municipality clearly is providing services in advance of need — it has to do that — and if it has done that without incurring debt, then we don't have a trigger for section 68, which says it can recover debt. I wonder whether the act and the regulations would permit it to replenish the source that was used to provide the excess capacity. I'm not sure they would. There are a few other comments that relate to the same question.

The third area of concern relates to the matter of capital grants and subsidies, and I understand this was raised this morning by Mr Hopcroft. The problem there is that of course grants and subsidies are netted from the cost, but when you net them in paragraph 6 and you move through those steps in order, what you're doing is taking the entirety of the capital grants and subsidies from the growth-related costs. The problem is that the grants, the subsidies and the fund-raising in many cases aren't attributable to the growth-related costs. They are attributable to the non-growth-related costs. They are things that the existing community has raised for its share of the cost.

If that's what the words mean, then I think that's unfair and a municipality should not be required to net off the entirety of the subsidies and the fund-raising from the growth-related costs, because that's not what they relate to in many cases. It should net off whatever portion of the subsidies relate to those costs.

The final area of concern on the calculation is the percentage reductions, the 10% and the 30%. I say that the basis for requiring any municipal cost share for sewer, water, roads and electrical is not clear to me and I guess the minister this morning has basically said the same thing. Quite obviously, it is not prudent to put financial obstacles in the path of getting servicing put in place in a timely way, and that surely is the fundamental purpose of the legislation, to enable the municipalities to have access to a funding source which permits them to get the servicing done, if you don't want to have them endeavouring to find a 10% share or a 30% share. The municipal cost percentages are unduly onerous. I don't have further comment on their magnitude; I think many submissions have been made by the municipalities in that regard.

The next point is on the municipal contribution, and really that's what section 36 of the bill says, that when a municipality spends from its reserve fund, it must produce a copayment, the 10% or the 30%. The problem I have with that is that no matter how economically a municipality proceeds, no matter how good a job it does in reducing costs and reducing its development charge, at the end of the day it's still got to come up with 10% and 30%. I don't think that's fair. I don't think that provides much of an incentive for a municipality.

My recommendation is that you delete, expunge, section 36 and subsections 42(4),(5) and (6) altogether. Leave subsection 5(6) in, which has perhaps not 10% and 30% reductions in the costs, but whatever percentages ultimately arise, 0% and 10%, or whatever it might be, but don't require the municipality to produce from its own funds the matching share. Leave with the municipality the ability to go out there and get the cost down lower than what was estimated for the purposes of the development charge, reduce its standards to phase projects and so on, so that it has the potential for escaping full payment of that cost share. I think there is a better incentive there.

The fourth point is on reserve fund draws. I just want to make a simple point that section 35 indicates that those draws only be for capital costs underlying the determination of the charge. I think that's fine so long as a municipality has discretion to adjust project funding in accordance with actual costs and with changes in project definition and priority as they occur. Otherwise I presume a municipality would have to go back to the public and amend its bylaw every time there was a change in its program, and I think that once again would put obstacles in the path of getting the servicing in place. I think that's unduly rigid and inflexible, so I just want to make sure there is sufficient flexibility in the way in which the wording is expressed in terms of draws. I don't know that that flexibility is there.

In terms of comments on the objectives of Bill 98, I certainly fully endorse the underlying objectives of the bill to remove barriers to economic growth, to ensure that municipal servicing is as efficient as possible and to make new homes more affordable. But as I've said, I think the fundamental purpose of this legislation is to provide municipalities with a source of capital financing which is sufficient to permit needed services — “needed” underlined — based on reasonable standards, to be put in place properly and expeditiously. I don't think you want too many obstacles introduced in the interest of helping the municipalities to be more efficient that might interfere with the “expeditiously” part of this.

The next point I comment on is the statement made by the minister that development charges are one of the major contributing factors to bringing apartment building construction to a standstill. I have two simple suggestions. The first one is, if the magnitude of development charges is having that effect, you can deal with that quite readily. First of all, with respect to education development charges, as you may or may not know, the education development charge for apartments is exactly the same as the education development charge for single detached dwellings and it's that way because the regulations require it to be that way.

For seven years we have been suggesting, to anyone who listens, that that's not fair and ought to be changed, because the people yield from apartments, as you might imagine, in many cases is far below the people yield on single detached dwellings. The proper charge for apartments would be far less, in some cases up to \$1,400 a unit less, and that's in some cases 10%, 15% of the entire charge on apartments, municipal, school and otherwise. That's been sitting there for seven years.

1430

The other point is that the GTA Task Force and many other studies have made the point that in many instances higher-density intensive development has the potential to produce economies with respect to servicing. You get lower use of water per capita, you get lower trip generation, all sorts of things, but there is no requirement in the legislation that the true servicing costs for higher-density development be put in place. So what is done in most cases is simply to say: "An apartment has an occupancy which is about half the occupancy of a single, so that's what the charge will be. We'll assume that the per capita demand for service is the same." But the per capita demand for service isn't the same, and by putting in the legislation requirement that that be looked at a little more carefully, you'd find the apartment charge going down again, and quite possibly by something like \$1,000 a unit. There are two, to me, relatively simple means to get the charge down without throwing out the act wholesale.

The next point made, once again by the minister, was about industrial development. I am certainly mindful of that, I understand the importance of that, but the example given was \$200,000 on 100,000 square feet; that's \$2 a square foot. I would just point out that the total cumulative charge for industrial development in the GTA in most cases is \$3 to \$4 a square foot. I am agreeing with the statement of the problem, but the problem is twice as severe as the statement.

You have all kinds of examples with municipalities where they have exempted industry, reduced the charge, phased the charge, cut the charge, but you have regional municipalities, you have area municipalities, you have the utilities, you have the two school boards all imposing industrial charges, and it accumulates. In the GTA it accumulates to \$3, \$4, \$5 a square foot. You have a lot of interest in that little bit of tax room, and it may just be that in the interest of strengthening the province's competitive position some other funding sources should be found for part of that.

The last page I have is just a few comments on some remarks that were made this morning that I'll provide input on, with great respect. The first was the statement by the minister that despite the best intentions of the act in 1989, something has gone fundamentally wrong with the way with which the act has been put in place and the charges, in effect, have got out of control. I guess you can look at it in different ways. The way I look at it, in the GTA the charge for single detached dwellings, the median charge, was \$13,500 in December 1989. We know that because we did a survey and we were paid by the Ministry of Municipal Affairs to do it. The median charge right now in the GTA is — I'm sorry, \$9,200 in 1989. The charge right now is \$13,500, the median charge.

In that time the highest charge has gone also from about \$13,500 to \$20,000. So the highest charge went up \$6,500. But the median charge in the GTA in that seven-year period went up \$4,300. The table on page 10 shows you in approximate terms why it went up \$4,300. Fourteen hundred dollars was in for cost inflation; there was actually more cost inflation than \$1,400 but the municipi-

palities didn't put it in place. Eight hundred dollars was there because costs were moved from individual subdivision agreements to the charge. That was a requirement of the act. So there is no increase; it is just a transfer from individual subdividers' accounts to the development charge. Eighteen hundred dollars was there because the province said, "We're now going to have education development charges"; they didn't exist in 1989 and they now do. Three hundred dollars was there because of hydro; there were few hydro charges in 1989 but not many, and now you have it as a wide spread element.

That accounts for what happened. I don't consider that to be an abuse of the process or anything particularly out of line. I think it's quite fair to say, in justifying the need for change, that circumstances today are different from circumstances seven years ago. We have to get costs down and we have to get charges down and we have to get house prices down and we have to get employment up. I think that's fine, but I don't think it's necessary to derogate in the process what has occurred over the last seven years. Thank you.

The Chair: Thank you very much. We have one minute left per caucus so I caution you to have your questions very brief. We'll begin with Mr Clement.

Mr Clement: Are you suggesting then that one of the solutions for the 70% is to look at discounting?

Mr Watson: I'm not sure I understand your question.

Mr Clement: If you've got a particular charge for a particular service, the developers look after the first 70%, and if the municipality could find the savings to render less than 30% in terms of delivering the same service at less cost, it has the flexibility to do so?

Mr Watson: Yes. I wouldn't use 70-30 myself, but whatever the percentages are, yes.

Mr Sergio: Mr. Watson, thanks for coming down and making a presentation to our committee. Would this be something that you would favour, let's say, to leave it up to the individual municipality to deal with the development charges if they are too high or too low, to let the local municipality decide, suiting their needs, arranging that with whatever developer may be in that particular municipality, to make sure they can make it out among themselves; or should it be blanket legislation governing every municipality by imposition?

Mr Watson: Blanket legislation has its place. I think the Development Charges Act of 1989 has introduced many positive changes, and if care is exercised in how much control is administered, I think the legislation is good.

Mr Sergio: With any flexibility for local municipalities?

Mr Watson: Yes, I think there should be flexibility. For example, with industrial charges we have municipalities in the GTA that are basically hot markets for industry and industrial development charges are interfering with that very much. You have much of the rest of the province that is not in that position. Most of them don't have industrial charges anyway because they're trying to encourage industry. Then you have a few, perhaps a couple of dozen municipalities, that do have significant charges, so you wonder whether you need

legislation that's province-wide to deal with very specialized situations.

Ms Churley: Thank you for your presentation and some of the technical aspects. You have looked at it very closely; I think more closely than most. We had Mayor McCallion and Mayor Mulvale in here this morning. I don't know whether you were here for that presentation, but they are certainly reflecting what I'm hearing from mayors of all political stripes: that this is not needed legislation; that in fact there is a building boom going on now in a lot of their municipalities and that there are a lot of other market forces at play that determine the cost of housing, building booms and all of that, and that this is missing the mark. You mentioned some of them around departments and stuff that can make a lot of other changes that would better the situation. Would you agree with that?

Mr Watson: I would agree that there are a lot of forces affecting housing prices. Between 1989 and now, house prices, as we all know, have gone down. Development charges went up, house prices went down. They went down because the market went soft. So there are all kinds of factors involved. In the next few years house prices may well go up, even though development charges go down. It's pretty hard to track one to the other. But I have trouble — you put several questions in there.

Ms Churley: I know. That's what happens when you have a minute. We've gotten good at that.

The Chair: Thank you very much, Mr Watson. On behalf of the committee, we appreciate you taking the time to come before it and offer your advice.

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LEBOVIC ENTERPRISES

The Chair: We would now like to hear from Lebovic Enterprises. Mr Cherniak, please. Welcome, Mr Cherniak.

Mr Lloyd Cherniak: Good day.

The Chair: Your presentation is just being passed out now.

Mr Cherniak: I'll be brief, especially after hearing the perpetrator of most of our development charges speak. I might have a different view of the issue than Mr Watson does, although I might be more similar to Mr Stamm, but less extreme.

By way of background, I've worked in development in the GTA since about 1975, for Canadian Pacific or Marathon Realty. For the last 17 years I've worked for Lebovic Enterprises. It's a development company that does large-scale residential subdivisions in the GTA and we also have a very large industrial-commercial portfolio which we presently maintain. We're active now primarily in Pickering, Aurora, Ajax, Richmond Hill and Stouffville.

Briefly, I want to take an example which I've used back from about 1981-82 when we had a recession previously. At that time most of our development was still in Scarborough, as there were significant lands undeveloped in Metro. In that recession both the federal and provincial government had decided to provide grants to first-time home buyers. We were in the position of having some subdivisions which were ongoing and we

were able to take advantage of this, but the basis was that the house had to be under \$100,000. These are not mathematical statistics or by a statistician; this is what the government wanted and this is what we had to produce. So we built ourselves a variety of these houses on 30-foot lots and we sold them for \$99,000.

I use this as an example because today, in looking at our sales brochures, the same house would be slightly less than double the price. Of course, some of that would be accounted for in frills that people today are looking for, and secondly, there have been some increases in construction costs. But really, what has caused the change? Why did we see such a big rise in the last time?

Certainly when I look at our values of what we're selling lots for to builders, they're very similar today. This is not because of huge land profits. I look at our profit margins on house construction and they're pretty lean, as they were in the 1980s, so I would say they're pretty similar. The biggest increase is clearly the increase that has gone to government, and by far the largest of these increases is development charges.

At that time when we were building in Scarborough, we didn't have development charges, we had lot levies. These were calculated based of the existing law at that time, which said they could be hard costs and they must be attributable as a result of new development. We would sit down with Scarborough's works departments, we would see what specific roads had to be built or which sewers service new development and then we would calculate what was the growth in the municipality by looking at the official plan or the actual developments, and the bottom line was less than \$1,000 a lot. These again are facts; they are not statistics and they are not averages, as Mr Watson likes to use. This is what we paid.

At that time when we dealt with the Scarborough Public Utilities Commission, we had to pay the cost of burying hydro because Scarborough felt that it was a new suburb and it didn't want to see poles and wires. That's the only charge we paid for hydro. We didn't have to pay for basic installation because the utilities would collect that from the users. As an example, today we are building on 30-foot lots in Aurora and our development charge on that lot is \$17,589. In addition, we pay for planning studies. We have all the land losses due to environmental issues of the day. We're required to construct all the hard services, and we even build the hydro system.

The federal government, unfortunately, has now added GST to the land component of the purchase price, which by my calculations on this size of house would add another \$4,200 to the cost of new houses. Neither of these two costs apply to resale houses. Therefore, the cost of a new home has been increased by about 25% solely for development charges and GST, both forms of taxation that do not apply to resale homes but are directed solely at new homeowners.

My current fitness guru, Susan Powter, has a phrase called "Stop the insanity," and I believe it's time this happened with development charges. Many municipalities have got on this sort of drug dependence of providing for taxpayers through new homeowners instead of proper and equitable taxation principles. New developments should

clearly pay for direct infrastructure costs. We're not denying that. But soft costs are also collected in property taxes, utility fees or personal income taxes. It's time that user fees covered the proper business plans of municipalities and PUCs. This double tax collection should be discontinued.

In terms of the introduction of the Development Charges Act by the Liberal government, there was a false promise of accountability, in my view. Where have these vast sums of money gone that people collected? Certainly the building spree of new city halls is an obvious example. The copayment provisions proposed in this bill will finally bring some reality and sense to this problem.

Another area of concern on my own part has been the lack of use and cooperation with front-end financing. We've been involved with a development in Ajax which, as far as I know, is the only example in the province where this provision has been used. Rather than get into the details, which I am sure others will do, we simply urge you to review this provision to make it workable and perhaps give some teeth to the existing right of municipalities to use the "best efforts" provisions to collect from benefiting future developers. It surely becomes onerous when we have to build a large and expensive system and there is no way to recoup the money. Certainly it would help us to do these projects knowing that we could collect in the future.

In regard to industrial and commercial development, I ask you, why have a development charge at all? At the very best, industry would pay for external roads or sewers but certainly not, for example, for waste disposal, which is a private cost paid directly by industrial tenants. I heard Mr Watson, but in my example in Aurora, commercial-industrial tenants pay \$48.86 per square metre development charge, working out to \$4.70 a square foot. We currently own buildings and have serviced land which we're trying to rent for \$4 a square foot a year in Aurora. The cost solely of construction of a factory in Aurora is around \$40 a square foot, so you can clearly see there is already little or no profit for the land, and that means even the servicing of raw land, so how can this levy really be paid? Again, do we have to drive prices up until they're the highest in North America? Surely we can stop the insanity.

We need to compete globally. As an example, several of our tenants in Aurora have moved operations out of the GTA and simply ship from Atlanta or elsewhere in the United States. I can give you those examples if you want. We must be competitive and work together with governments to lower our costs, as we in industry have been doing in the last years.

Finally, by way of comparison, there are very few jurisdictions in the United States that tax new growth. One of the few places in our travels where we've seen it is in California, where it's called "extractions." The result has been some of the highest housing prices for comparable product in the United States. We therefore support the government's initiative to reduce superfluous cost to new housing as proposed in Bill 98, and hopefully get us closer to the \$99,000 starter home, instead of keeping the price of housing beyond the reach of the first-time home buyer. That's my submission.

Mr Sergio: Thank you for coming with a presentation to our committee, sir. There's a number of what we call at the local level "essential services" that the local municipality usually provides to the community, and some of those are police, fire, ambulance, recreation centre facilities, libraries and so forth. They are being left off in the legislation here. Do you believe those are essential services that communities should be provided prior to building towns and home subdivisions, or should they be built afterwards?

Mr Cherniak: What I'm saying to you is that the existing homeowner does not pay for those facilities except in his property taxes. Nobody built those things for him; they exist as part of that community. I'm not denigrating them, but there are collective and property taxes. There were many times when municipalities debentured in the past and built services, and then they had to think about what they built. Today you're saying, let the new homeowner build it, and I'm saying to you, why? There is no reason for that.

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Mr Sergio: What you're really saying is, build a new community there but don't provide fire protection, police protection, a library for its people; don't provide hospital care, although for a hospital it is a larger area of course. Is this what we are really hearing?

Mr Cherniak: That's not what I said. What I said was, if you buy a house in Markham and you buy it as a resale, you don't pay a development charge. You get to use the library. How is it funded? You pay your property taxes. Why is it different for the new homeowner? Why should they pay for a new library to be built, when it may not be needed?

Mr Sergio: Another brief question: What if this new development were to infringe the services? To provide to this new subdivision, here or wherever, what if those services were to infringe on an existing community? Should they be paying the whole shot? Let's say the sewer capacity is not enough to provide for this new subdivision here. They have to improve the sewer capacity throughout this existing community. Do you think the existing community should bear the brunt of a flooded basement every time it rains because of a new subdivision up the street?

Mr Cherniak: When you talk about a library, I go to libraries. I very rarely see a lot of people in them. When I lived in North York and grew up there, we had libraries there too. Now I go to Markham and I see a beautiful facility with a big fountain and nobody in it. So fine, let's build another one. Let's build 100 of them, just because it's a new homeowner. You show me where you've got statistics to show that libraries in the GTA are so overcrowded that every new house should pay so much a house to build another one, and then I'll believe you.

We're not here to say that developers shouldn't face problems or new homeowners shouldn't face problems created by growth. What we're saying to you is this airy-fairy number crunching that comes up with these statistics is not reality. Show me how a person can afford a house in the GTA if we don't get some sense into this discussion.

Ms Churley: I believe this is the first day before this committee that there are a number of issues that there are some real fundamental disagreements on between the municipalities and developers. There are some community groups coming forward — we haven't heard from a lot yet, there will be more — but in particular we heard health care advocates this morning focus more on hospitals but expanding into health care and real concern that that's been taken out, and the sense that fire services and others are absolutely essential. Given the fact that there is downloading perhaps in long-term care and hospital closures and all kinds of other restraints on municipal financing, there is real concern about that. What's your opinion? You just expressed your opinion about libraries. What's your opinion on hospitals and health care in expanding or new communities?

Mr Cherniak: Well, you and I have disagreed in the past so —

Ms Churley: Perhaps we would agree on health care.

Mr Cherniak: I don't understand how health care has anything to do with development charges. I don't see this in the act, I don't see it in front of me.

Ms Churley: So you think the development charges should absolutely be just bare bones, in the ground, what's needed to service that house: your water, sewage, wires in the ground, and that all the rest of the community needs are to be supplied by the local municipality and taxpayers, and God forbid, if the money isn't there, then you'd prefer to walk away from developing because the community can't afford on its own to provide the services in a fiscally tight situation, which is what mayors are saying to us will happen.

Mr Cherniak: Where is health care in Bill 98?

Ms Churley: It's not. There's concern.

Mr Cherniak: So why are we talking about it?

Ms Churley: Because people this morning, and we'll be hearing from others, believe that it should be, that it is an essential service and that it's a tiny component of what's being charged now in some municipalities, and they have great fears that it's not considered an essential service in an expanding new community.

Mr Cherniak: It seems to me that we're closing hospitals, not trying to build new ones, so I don't understand your point. Our company contributes substantially to health care through charitable donations, but I don't see that in Bill 98. I don't think this is the forum for that approach, nor do I see what it has to do with it.

Ms Churley: I'd be happy to provide you, as the clerk would, with some of the presentations this morning because I don't have time to explain it to you now, but it might be worthwhile then for you to take a look at it to see what the concern is. I'm sure the Chair is going to cut me off any second now.

Mr O'Toole: Thank you, Mr Cherniak, for your presentation. The presenter before you, Mr Watson, as you know, was one of the persons who developed the quantum or the formula, and I'm asking you a question here: Do you think you're implying that the formula they developed, for which by the way he was a consultant for many municipalities, was a standard hybrid where the level of service was kind of a level of service that was

spread across many municipalities that might have been higher?

Mr Cherniak: He was hired by all these municipalities, he was doing them all, so he had a certain rationale which he just used.

Mr O'Toole: I guess the argument might be that the market itself determines the price of a house. We've heard that a couple of times, and that the market has risen and fallen with some rhythm to the economy itself. However, the tax rate never seems to follow that parallel rhythm. Do you think there's something we could be doing here to look at it in a different way totally and to allow the development charge to be some other kind of formula? We're fixing a certain amount, and indexing that amount, by the way. That's how it works. Yet the price of a house itself can fall and we've seen this presented as — is there some other way of defining this formula, where it follows the roll of the economy? Technically taxes never go down, they always go up. Do you understand?

Mr Cherniak: We have a property tax that's designed to do that. What you're doing is taking a market, the resale market, which is never quite the same as new houses and follows supply and demand and other factors. New housing, though, is an investment. People have to take vast sums of money, they have to buy a piece of land, they have to develop it, then they have to build houses, and it's not easy to raise funds if the development charge puts the actual cost of that product beyond what the person can afford to pay, or so much higher than the resale market that it is unmarketable. That's what will happen. There will be no new housing built.

That's always been the case with new housing. It's cost-driven, because any investment in infrastructure and construction cost has to receive a return. The bank won't loan us money. You'd be foolish to invest your own money. If you look at the cost of a new house at \$200,000 to \$500,000 and look at the money we make building that house, you'd have to be crazy to be in our business if you thought about it that way. But that's the reality of it. It's cost-driven.

The Chair: Mr Cherniak, thank you very much for taking the time to come this afternoon and present your views to the committee. We appreciate it.

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GREATER TORONTO HOME BUILDERS' ASSOCIATION

The Chair: If the representatives of the Greater Toronto Home Builders' Association are here, we can go ahead. Mr Dupuis, welcome to the committee.

Mr Stephen Dupuis: Thank you very much. It is a pleasure to be here. My name is Stephen Dupuis. I'm executive vice-president of the Greater Toronto Home Builders' Association. We like to think of ourselves as the voice of the residential construction industry here in the greater Toronto area. We represent the home builder, obviously, whether they're building a single detached home, a single-family or the semi, the town home, the condominium, the apartment. We represent the whole sphere of development right through to condominium

conversions, which seem to be the rage these days. We also represent the infill and custom home builder and the professional renovation contractor. In terms of dollar value, that's probably 50% of the business we do. It's kind of a hidden treasure in terms of what's happening in the renovation sector.

We represent the suppliers to the industry: brick manufacturers; window and door manufacturers; drywall manufacturers, fairly large companies; subcontractors; bricklaying subcontracting companies; the carpentry companies, a lot of jobs in that part of the business; and of course the service and professional firms: architects; engineers. Garry Stamm is a member; Ken Watts is not, but those service-type firms. All told, we have more than 850 member companies. We're quite proud of the fact that we've been providing services to the members and to the public since 1921. We celebrated our 75th anniversary last year. I don't know if it's a twist of fate, but Hazel McCallion also celebrated her 75th anniversary last year.

Last year our members sold more than 20,000 new homes, and it's probably a good time to respond to a comment I heard from Marilyn Churley, I guess coming from the mayors this morning about how there's a big boom going on and we're back to the days of the late 1980s. To put that 20,000 into some kind of perspective, average long-term demand in the greater Toronto area is 22,000 units, so if it looks like we're in a boom right now, it's relative to how poorly we were doing. We're not even back to the level of demand that's needed to just fulfil the normal supply in a market this big. Hopefully we'll get to the 22,000 this year. None the less, those 20,000 homes sold last year are the equivalent of 55,000 jobs for a year, each new home built. The multiplier is roughly two and a half full-time jobs per year, so we have an enormous economic impact, and as such we have a pretty enormous stake in the legislation at hand today.

I want to go back to the last election, in approaching Bill 98, and the statement made by then-candidate and now Premier Mike Harris. Our association had conducted a housing issues survey and we obviously asked the obligatory question on development charges, and Harris's response at the time was: "A PC government will review the Development Charges Act. We believe the act must be returned to its original purpose of funding hard services. We are also pledged to work closely with municipalities to find cost savings which will make excessive charges on new homes unnecessary."

A few months later, following the election and in a speech to the Ontario Home Builders' Association, the new minister put a little more emphasis on the campaign commitment when he said, "I am concerned about the impact these charges have had on the cost of development and I think the Development Charges Act has to get back to its original purpose, that is, to fund hard services," hard services being the key in both cases, and I think it's fair to say that at that point in time the municipalities had a legitimate cause for concern because that would have rolled development charges back, rolled the clock back, a long way.

We internally had our own roaring debate about whether this was going too far, too fast, too much

already. Recognizing that legislation must be sustainable and not wanting the next government to come in and roll it back to "scrap the legislation," we had an interest in making sure the new bill was sustainable. At the same time the municipalities were hanging on to the status quo as tightly as they could, but at that time our association supported a compromise that was put forward by the Urban Development Institute.

You may have heard this morning that in our support of that position we said that the UDI position goes a long way in the spirit of compromise with municipalities. We went on to say, "In light of the Premier's and the minister's comments on the issue, our endorsement takes UDIs position as a bottom line, not a starting point for negotiations."

To move forward another three or four months to the legislation introduced last November, the government put in the bank everything the industry said they would be prepared to live with or that we had conceded and much more. We had been looking for or suggested a co-payment of 50%. We ended up with 30% in the legislation, and I understand that's still up for discussion. The municipalities, in our view, had made substantial gains without ever coming to the table, but their immediate response was to freeze development, which in our view was a shameless tactic. It's one they continue to threaten and I've heard it myself many times. It's one that hopefully this government will never give in to, for obvious reasons.

With that background, if we could look at some of the issues raised in Bill 98: Under the existing act there is in our view no financial discipline imposed on municipalities. They can levy for a full range of soft services, up to 100%, and we're in a situation where most municipalities are billing for facilities without ever asking whether they need them, want them or whether they can afford to operate them in the long run. Once that new arena or recreation centre is built you've got to staff it, you've got to equip it, you've got to maintain it, you have to insure it and ultimately you have to replace it. We wonder, if the municipalities and taxpayers actually looked at these facilities and the true life-cycle costs, whether they might think twice about how badly they want them, growth or no growth.

The municipalities argue that the existing taxpayers should not have to pay for facilities required as a result of growth. I live in a new community. I've bought a new home twice in two new communities and I go to the facilities and I see lots of people from all over town in the facilities. In fact, when I used to live up in Georgina, my neighbour used to make the trip down to Aurora because it had a great swimming pool. This is the kind of thing that happens, and over time the lines of these facilities get too blurred, yet it's growth that's paying for them.

The municipalities argue that the province has cut their funding so that they need development charges even more. To me that's a signal that they just don't get it. The legislation is saying, "We need to rationalize services, we need to cut costs," and the municipalities are saying, "No, if you're going to cut us here we need to get it back dollar for dollar." You've seen these wild impact

statements how cuts to development charges are going to increase property taxes by some numbers that I can't believe. I can't believe that what's imposed in Bill 98 is going to increase taxes in Markham by 30%. I just don't think the math is there. I haven't run the numbers but I would be very surprised.

When you look at development charges in the context of non-residential development, the impact becomes even more heightened. It's obvious that development charges add to the cost of billing offices, factories and commercial buildings, and we all know we live in a global society and that really the employers face few restrictions in terms of where to locate that plant. Ultimately it's a cost issue, and if we're not competitive we pay the price.

Looking at the issue by the numbers, since 1991, as municipalities have taken full advantage of the legislation introduced by the Peterson government at the height of the boom, quite different times, I might say, and at the urging of the municipalities, development charges have increased by far more than they will be reduced by Bill 98. There are many cases where development charges have doubled, tripled and even quadrupled since 1989.

For our part, when the legislation came in we commissioned Clayton Research, an independent and highly regarded research house, to do an impact analysis for us. We didn't know where the numbers were going to land but we wanted to be sure that we could call the bluff if one was coming down. We found that the regional municipalities are generally facing reductions in the 10% to 20% range, but having just read the statement by the minister this morning, the impact on regional municipalities is going to be effectively nil because that's where the hard surfaces have really been sitting — maybe 5% impact there.

Local municipalities, you're looking at reductions in the 25% to 35% range. It sounds like fairly large percentages, and there may have been higher ones where a municipality had been using DCs to their fullest extreme, whether they've got the broadest range of service. But again these are a far cry from the kinds of increases we've seen in the last five to seven years.

1510

The Oakville example here: In 1989 development charges were \$7,648; by 1995 they had increased 75% to \$13,404. So you've got a 75% increase there. Under the Clayton Research we had done, charges here would fall 22%, so with quick math I think that's about 47% still left on the table. The Halton regional charge would have fallen 15%, but now that's close to zero.

Markham: a 120% increase, from a little over \$8,000 in 1989 to more than \$17,000 in 1995. Charges there will fall 30%. When you look at the numbers, there is still 90% of increase in seven years that stays on the table. It makes us believe that the municipal reaction to Bill 98 is a little exaggerated. At the end of the day, builders and home buyers are still going to be paying some very stiff development charges, we're talking \$10,000-plus a unit, just about wherever you build in the greater Toronto area. I don't think anybody can sneeze at that kind of number.

I should say what we do like about Bill 98. We like the exclusions: museums, art centres and city halls. It's obvious that these serve the entire population. Culture is

not restricted to new home buyers. It is not a growth-related phenomenon by any means. The copayment on soft services is the part we really like. That's the part that forces the municipality to say: "Hey, do we want or need this facility? Are we prepared to put our money on the line?" That's the acid test in approaching these questions. The average level of service versus the highest level of service in the last 10 years is something we're asking for in the first go-round and something that's long overdue.

We have some concerns. The transit issue is still up in the air. Currently it's defined as a hard service. I see it's still 90% and not 100% as of this morning. When you run the numbers and the impact that would happen if transit was left in the hard service base at 100% or 90%, a lot of it becomes academic because those are big numbers on the cost side, and that's really going to offset some of the decreases that come from the soft service side. In our view transit is neither a hard service, certainly in the way we look at the fundamental traditional view of hard services, sewer, water and roads; nor is it necessarily growth-related. Transit moves people from all over communities and between communities as opposed to servicing just new growth. This is an issue that clearly needs to be re-examined.

In closing I want to emphasize that the decision the government must make is not whether the municipalities win and the industry loses or vice versa. The choice is really between housing affordability, jobs and economic growth versus continuation of the status quo.

I thank you for your time today and I would be glad to answer any questions you may have.

Ms Churley: Thank you very much. What would you define as the other areas of concern around problems in your industry. Surely, even though we disagree on a lot, you would agree that it isn't just development charges that get in the way, in your view, of the costs of housing. What else would you suggest be done?

Mr Dupuis: Our competition is the resale sector. We're only one third of the market, so we don't drag the boat. Prices are set by the resale market. So for us, we're at a disadvantage, and where the comparison hits the road is the goods and services tax — development charges are an obvious one as well — all the other regulations we as an industry face that aren't in place as they affect the resale sector. We're constantly fighting that uphill battle, and if you look at what's happened to new homes in the last seven to eight years, in the late 1980s we had a market share that was basically about 40% of the market. Through the last seven to eight years we have dropped to 20%, and I think it's fairly clear what's been happening to us. Our cost side has been growing. Our ability to get those costs recovered in the price has been totally eliminated. All of a sudden you're trying to sell GST and you just can't do it. That's our problem; it's competition.

Ms Churley: One of the things the minister said this morning, and it seemed to be very important to him in this legislation, is that the cost savings will be passed down to the new home buyer. Nobody can guarantee that. I believe, and I'm not an expert, but from my own experience in government and from what others say, that housing prices are set by the market. Do you feel comfortable in guaranteeing, and would you in writing, that

any savings from development charges will be reflected in the price of the home?

Mr Dupuis: The best guarantee that I think exists is the way the market operates right now. As I mentioned, we're only one third of the market. The resale market is out there, again, determining price. That's the competition. So that's got a natural dampening effect on prices. Number two, and we're out in Oakville, but you go to Oakville, Brampton, Mississauga, Vaughan, Richmond Hill, Markham and go to any corner on Saturday and look at the signs and look at the come-ons, the competition, there must be 400 — I think there are — new home sites in the greater Toronto area. The Star is full of ads every weekend. These builders are falling over each other to get the deal from each other.

The Chair: So you can't guarantee that.

Mr Dupuis: No, but market forces are going to guarantee that to some degree. I can tell you that buyers — we're at 20,000 new home sales now. We're not even at long-term demand, and the buyer is still — we just had a first-time home buyers' seminar last week. There were about 800 people there, and we asked the question, "Is it a buyer's market, a seller's market or a balanced market?" I was shocked that the vast majority of people still think it's a buyer's market, that they're in control. The builder is seeing that in the sales office because these people shop, shop and shop and compare, compare and compare and they don't leave a nickel on the table when they're looking for a house these days. That's good discipline. If there's one good thing that's come out of the recession, that's probably it.

Mr Young: In the same vein, you imply that our act is giving financial discipline to the municipalities. Following up on Ms Churley's question, in making housing affordable, which is one of our goals, is there any way you can think of that we could help demonstrate that the development charges going down have lowered the cost of housing? What I'm thinking of is the possibility of perhaps posting development charges somewhere on the signs on the street or in the documentation, whatever, to make the market even more competitive.

Mr Dupuis: One of the ways you can do it, and I say this with great caution, is to actually make them an adjustment on closing so that it's very clear for the purchaser to see.

Mr Young: Do your members support that, do you think?

Mr Dupuis: Some have done it, mostly in times where something just went up dramatically and they've been trying to be sure they're covered either way. The other way is to have the municipality collect them directly, and that way they can answer all the questions about them too. That would be my first choice. Second would be making it an adjustment on closing. It's a pretty big pill to swallow, because those adjustments on closing could start to look like \$30,000.

Mr Frank Sheehan (Lincoln): I don't know if you're the right person to ask this question, but I was intrigued by the presentation made by the Orlando Corp. He went into quite a bit of detail on pre-Development Charges Act and on the commercial and industrial land. Mr Cherniak also dealt with it.

Can you comment on that? I didn't get into the other cycle or I would have asked him. What effect is this having on the overall efficiency of government? It seems to me that with these costs, nobody's going to invest because they've got to go someplace else. I guess the next question is, where are these people going to work who live here, who are buying all these houses?

Mr Dupuis: I was going to say this whole issue cuts both ways because we want to get the plant and we want to get the jobs, but once we get the plant and the jobs, one of the locational decision factors is, is there reasonably priced housing for the workers and is there executive style housing for the owners as well? We need to supply both in the marketplace. Although we are the home builders association, we're just as concerned about that non-residential charge, because it's part of the whole environment of development.

Mr Sheehan: These numbers are outrageous.

Mr Sergio: Mr Dupuis, the minister said that elimination or reduction of development charges would reduce the average price of a home about \$5,000, although he didn't provide any figures on that. Based on your knowledge and experience of the market — you're shaking your head before I finish my question.

Mr Dupuis: I'm sorry; I'm taking it in.

1520

Mr Sergio: Is that a realistic assumption, that the average house price will come down by \$5,000?

Mr Dupuis: The research we had done showed the top dollar savings being \$3,400 in Brampton. There may have been some factors in the number the minister used this morning that I wasn't aware of, like the elimination of the 10% copayment on hard services.

Mr Sergio: If I were a prospective buyer, even first-time buyer, how could you demonstrate that to me, that I'm getting a \$3,400 reduction?

Mr Dupuis: Today I'd have to say that you're at least a year away from getting it, probably 18 months the way this legislation is phrased. Today there's nothing we can do. In fact, that's one of the frustrations, that the previous bylaws technically expired last November. They are held pending decisions on this legislation.

Mr Sergio: Let's say the legislation would be in place and you're building a house and I'm coming into your sales office ready to sign. I want to say, "Where is my \$5,000, my \$3,400?" How am I going to get it?

Mr Dupuis: The only thing I would say to that purchaser is, and we're forced to do this all the time because of the GST: Go to the bottom line. Forget GST, forget levies, forget everything: Go to the bottom line, all in, and compare that price to anything on the resale market or builder to builder, and if you don't like the deal, don't make the offer.

Mr Sergio: So really there is no such thing. I mean, it's shopping and you get the best that's on the market.

Mr Dupuis: That's right.

Mr Sergio: Okay. I have one more question.

The Chair: Sorry.

Mr Dupuis, I do thank you on behalf of the members of the committee for taking the time to come this afternoon and present your views.

METRUS DEVELOPMENT INC

The Chair: The next association is Metrus Development, Mr Nelson.

Mr Fraser Nelson: Thank you for the opportunity to make a presentation to you today. My name is Fraser Nelson and I'm the general manager and vice-president of Metrus Development Inc. Metrus is a land development company that works primarily in the greater Toronto area but throughout Ontario, such areas as Windsor and Niagara Falls as well. We have been in business over 20 years, doing both land development and we have an industrial portfolio.

My experience with development charges ranges from the daily task of signing cheques so we can obtain building permits from many municipalities to being involved at the outset, from the previous government, with the April 1992 municipal affairs task force on development charges, and I helped assist with UDI and the representations with the greater Toronto area representatives.

Out of all this experience I find there are really four areas that I'm glad Bill 98 addresses. Those four areas are: to control the level of service; to address the attribution of cost between growth and non-growth; to ensure public accountability; and, touch wood, I hope it's going to be easy to implement, although the earlier speakers might suggest otherwise.

Very quickly, because I'm looking forward to questions as well, the level of service is controlled in the bill by removing those ineligible services and, probably most importantly, by applying the average-level-of-service test as opposed to the act, which says it would be the peak level of service. That has been the greatest area of concern with the present act.

Attribution of cost between growth and non-growth is addressed through the requirement of what's called the benefits test, as opposed to the previous formula, which used the trigger test. Bill 98 requires that any increase in the need for service must be reduced by the amount which benefits existing development, and it was further addressed by the requirement for the capital cost reduction or what is called the copayment.

Greater public accountability is accomplished through the requirement for the background study that addresses not only the capital costs but, most importantly, the operating costs for each service. It's interesting to sit at the table and have a treasurer of a municipality within the GTA look at the minister and say it took him five years to convince his council not to spend capital dollars because they had them because there was a downside to spending a capital dollar, and that downside was the operating cost and replacement cost. That's not coming from UDI; that's coming from staff at a municipality. I look forward to reviewing the regulations to ensure there is a linkage between the background study and the financial statement as it goes forward and the reporting statement at the end of each year.

I'll skip past the ease of implementation because that remains to be seen.

I want to give some positive background and examples today to let you know how some municipalities have dealt with this in a favourable fashion, but they are

singular examples almost literally to the point of being unique. Certainly the municipalities were saying, "Trust us." I think we do need legislation to provide the control. I'll go back to my main theme here: We have to have the legislation to control the level of service.

Development charges have become the driving force behind land development and housing costs. Historically, the ranking of costs in land development were land, servicing and levies. This is no longer the case. You'll see attached at the back the UDI table that quantifies the government charges on an affordable \$160,000 townhouse as 23%, or \$36,000 of its final cost. Of this amount, approximately 50% is related to development charges.

I can tell you today that the ranking of cost of land development has reversed. Development charges are the number one cost now, usually followed by land and then servicing. In fact, we use a measure: If we're buying the land for more than the development charges are worth, we take a big step back and review our numbers.

Where do we come from? I won't dwell on this. The home builders have touched on that and there's a table that shows you pre- and post- comparison of charges.

I will dwell on and build on what Phil King said. The real measure of the impact of development charges is on the non-residential sector. Thank goodness Bill 98 exempts expansion of existing buildings. It really solidifies what most municipalities recognized they had to do and it will be, and continue to be, a major incentive to economic activity in the GTA. All economic development officers agree that enabling your home industries to expand is the best investment.

I make mention here of a study done by the Ministry of Economic Development and Trade benchmarking Ontario's automotive parts industry. Suffice to say that Ontario is competitive in all categories except industrial land cost. They cite one example: Lansing, Michigan, at \$15,000 an acre for a serviced lot; in Ontario it's \$270,000 per acre. Why is that? Because development charges constitute \$100,000 an acre, that's why. We agree with all the numbers that have been bandied around today. Phil King is talking about \$75,000 an acre. My example is in the region of York, where I deal daily. It's \$100,000 an acre, and it's the cumulative effect of the education charge, the utility charge, the municipal charge and the regional charge.

You'll see a summary attached as well comparing 1995 charges in the region of York. Because of phasing, thank goodness, they've been moderated. But if those phases are allowed to mature as their present bylaw stipulates, their phasing-in times, they'll increase to \$150,000 per acre. Thank goodness when we put those numbers forward to the regional politicians, they realized the problem and have rolled back and prevented the increases occurring.

The existing act simply does not control the level of service. I want to give a good example of how to control level of service. It was our experience with both school boards in the region of Peel in the Metrus Springdale residential subdivision. Phil King, I think, mentioned it. There had been previously no incentive to reduce the costs, and years of rules and regulations had made it almost impossible to break the mould of schools costing

\$120 a square foot. Through the cooperation of staff at the government level in both school boards, we're proud to say that now, today, two new elementary schools have been built in Springdale for a cost of \$80 a square foot, fully furnished. I can literally tell you that as short as two and a half years ago they said it couldn't be done, but it's done and they're open for business today. I think that whole theme has to roll forward with Bill 98.

1530

I guess in a sense I disagree with some of the earlier comments that the idea of a copayment takes away from the incentive. I actually think the copayment provides a very valuable incentive for all parties to seek cost efficiencies. I'm not arguing on the hard side; it was never our position that hards should be copayment. Those are directly a benefit to growth and we should pay for them. But I take a big step back when it comes to the soft services.

UDI asked for three key changes. I won't dwell on them, but I'll only repeat that with hydro we're able to cite one example, which is Vaughan Hydro, that does not charge a hydro DC and they've survived quite well as one of the fastest-growing municipalities.

We can cite only recently where Markham Hydro recognized that there wasn't a direct correlation between growth and their charge for rolling stock and administration. They took those out of their charges and it dropped by 20%, and we thank them very much. But you all know how many utilities there are in this province and we certainly don't have the time and energy to go and approach all of them and make the same argument. But we appreciated their recognizing that they just couldn't justify the straight-line relationship. That's why we're saying hydro can be and should be an ineligible service.

With waste management, Mr King also mentioned that the non-residential sector pays to collect and dispose of its own solid waste, so why should they have to pay a charge? I suspect that as the municipalities work towards finding collective solutions to solid waste it's going to be extremely complicated to have one municipality set a charge and perhaps have to look at the other municipality that might have the solution for its solid waste. So that's a complication. It strikes me, though: What better area than solid waste for reducing/recycling than to have it as a user fee?

Finally, transit. Transit is being requested to be funded equally. That's what UDI says. Right now it's being put in for on the hard side with the minister's announcement. I am concerned that whatever gains and economic incentives we have from a reduction through other areas in Bill 98 will be lost to transit. That is the area in the future that is the absolute biggest unknown. Presently I would say the only control on transit is the operating costs, from what I can see from the experience we've had with it.

I wish to conclude that Bill 98 provides the right balance to have all parties seek cost-efficient delivery of services. In my mind it's never been a question of growth paying for growth. Rather, growth should pay its fair and reasonable share, and Bill 98 accomplishes this. Thank you.

The Chair: Thank you very much. We have about three minutes per caucus.

Mr Clement: Thank you. I'm hoping you can help me wrap my mind around an issue that has arisen this afternoon by virtue of some of the statistics that you are providing on this page here that illustrates the development charges in selected municipalities. You compare development charges in various municipalities, including my own, in 1985, 1989, 1993 and 1995. For instance, Brampton went from \$8,816 in 1989 to \$13,500, in that six-year period.

I'm comparing that to Mr Watson, who came by earlier this afternoon, who claims that the median increase per unit on average is \$4,300, I believe from 1989 to 1997. He said, "Look, it's not a big problem because it's only gone up \$4,300 on average or on a median from 1989 to 1997, so you're trying to defeat a problem that doesn't exist." Well, I'm looking at your numbers. Maybe there are one or two in here that go up \$4,300 or less, but most of them go up \$6,000, \$8,000, \$9,000 from 1989 to 1995, let alone 1997. Can you shed some light on whose statistics are more accurate?

Mr Sergio: His, of course.

Mr Clement: Well, I just want it on the record.

Mr Nelson: I know you want it on the record. This is from the Ontario Home Builders' Association. Let me first quantify that; they did the research. It has been my experience that there had been quantum leaps in charges post-Bill 20, the present Development Charges Act. That has been our experience throughout the GTA, where the development charges have gone up and up and up not only because of the inflation index that has been applied to them but also because of, again, this peak level of service which has allowed the charge to skyrocket.

Mr Hardeman: Just very quickly, thank you very much for your presentation. In your numbers you talked about the cost of an acre of land in Lansing at \$15,000 and the development charge is \$100,000, but that still leaves \$170,000 for an acre of land here as opposed to Lansing. What contributes to that \$170,000 as opposed to \$15,000?

Mr Nelson: I wish I knew how they did it there. Certainly the servicing costs for industrial land here are around \$80,000 an acre. That leaves you then \$70,000 an acre for all of your other costs required to deliver that, including land, which is the main component here. As I mentioned, our three categories are servicing, land and development charges, so we can quickly identify at least \$180,000 of the \$270,000.

Mr Sergio: Mr Nelson, thank you for coming down to make a presentation to our committee. The affordability of homes and land and stuff like that depends also on the market — I'm playing the devil's advocate here — at any time. The price of land and homes goes with the times, goes up and down.

Mr Nelson: Yes.

Mr Sergio: Right. I know, for example, some developers, perhaps even yourself, in the last few years paid \$1 million for one acre of residential land with high densities. Today that same lot perhaps may be worth a couple of hundred thousand dollars. The services would be the same, right, to service that particular piece of land?

Mr Nelson: Yes.

Mr Sergio: Is it then possible that maybe the role here is the culprit? You have your own role to make money as a private developer. Local municipalities have a very different role. They've got to provide service, at a cost. Can you fault the local municipalities, let's say, especially in bad times, for providing those needed services to its residents and therefore they have to charge whatever they may have to charge?

Mr Nelson: No, they shouldn't be charging whatever they have to charge. My answer is this: My whole premise is level of service —

Mr Sergio: I hope to follow up with another question, that's why I'm asking this question.

Mr Nelson: I understand. Level of service has gotten out of sight, absolutely out of sight, and the cost reflects that. That's all it is. Now, if the municipality goes in and says they have to have it, we're saying we'd like the average test because why should the new homeowner — and especially where you're leading to, on what we call the soft services, which are not delivered when they move in. They're there, quite often, for several years before the rec facility is built or any other soft facility is provided for them. They're a taxpayer as well.

We do it as a sharing. The test should be when they move in they've contributed towards a portion of the capital cost. Then they become a taxpayer and through their taxes they contribute towards the balance of the requirement for delivering that service. We really need a test because fundamentally the municipalities have a problem. When the ratepayer shows up and asks for this service and they've got a pot of capital dollars there, they're hard-pressed to refuse the spending of it. I didn't come today to cite abuses, but if you ask me, I can fill an hour of abuses where municipalities cannot resist the spending of the capital dollars. I'll cite the treasurer of a municipality who simply said it took him five years of concerted effort to control his council. That's the reality of it.

Mr Sergio: What happens, for example, when you're a developer and you have a piece of land that you apply for a building permit or rezoning on and say, "I want five times coverage because I've got to get paid because I paid \$1 million for this piece of land"? The local municipality says, "Okay, we'll give you that rezoning but you've got to provide certain things." Right? You're caught in the situation where you say either you pay —

The Chair: Briefly.

Mr Sergio: — or you won't get the rezoning, let's say, or that particular high density so you can make more units and make more money.

Mr Nelson: Well, quite the opposite. Quick example: We bought 1,000 acres in four projects in 1996. We bought them from the bank because the previous developer went bankrupt because of the economy, and development charge is part of that. In one of those projects, which is the former city of Toronto lands known as the jail farm, we did the opposite: We dropped the density. We couldn't afford the development charge price on it so we went down to a lower density. The municipality was happy and today you can go and buy townhouses on Yonge Street for an affordable price.

Mr Sergio: So are you saying then it's —

The Chair: Excuse me, I'm sorry. Ms Churley.

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Ms Churley: Thank you very much. I'd like your opinion. I think you've given it to some extent, but perhaps a fuller opinion as to why there's such a difference between the mayors and councillors and the developers, why well-respected mayors like Hazel McCallion and others have real concerns. They disagree and are insulted, for instance, when the Urban Development Institute, in particular, makes suggestions that they're not managing well, that they're not doing better than other levels of government. They're feeling very insulted by certain statements from the development industry, frankly.

I'm wondering why there's such a problem here. You seem to be suggesting that there's no control at the municipal level, they're wasting money and the only way that it can be gotten under control is to rein them in under this legislation, and you can provide the same services for a whole lot less money if they're reined in. Is that what you're saying?

Mr Nelson: No, I'd put it differently. First of all, Mississauga is an extremely well run municipality. I wish all the other municipalities had as much in reserve funds as Mississauga. My comment is that the present act allows a study to be done to charge an astronomical amount of money for any number of services and in particular the soft services. The ratepayers are demanding those services from the politicians. They tell us that daily. It's the kid in a candy store situation. If you have the capital dollars you'll spend it. Should you spend it? Should you look at your operating costs? Should you really see whether you need that level of service? Bill 98 brings those questions to the forefront. They were buried before. I'm not saying they're fiscally irresponsible at all. The present act allows them to charge in a fiscally irresponsible way.

Ms Churley: So you would still accept that in order for a community to be viable and in order for, say, a new development — when people are out shopping they're not just looking for the infrastructure. I mean, I have kids; I want services for those kids. I have elderly parents; I want health care for those parents etc. I like libraries myself. There are certain things that I think generally people look for when they're looking for a house. They're also looking for a good community to live in. It's not just infrastructure people are buying. Doesn't it help sell?

Mr Nelson: Okay, let me answer your multiple questions. It doesn't help sell. I live in Richmond Hill. It's a beautiful town. It has a library. It's an overbuilt library, and the politicians would agree to it, so much so it should be a regional facility. Do I regret that? So be it; it happened.

I look out onto a 20-acre park which has a community centre on it. Our firm built that. The town says they built it, but we paid for it, pre-development charges. They put a pool to it, attached it three years later, which was great. I watched them add 100 parking spots to it at a cost of \$300,000. I went as a homeowner and said: "Why are you putting those parking spots in? The parking lot for the existing facility has never been full, ever." I watch out my back window now. Every weekend they plow it and the lights are on 365 days a year, and it's never, ever full.

Yes, those facilities are needed and they're part of the community. They are normally delivered after the bulk of the community's been built. We're not arguing that we shouldn't pay a portion of it. The key is "a portion of it," because they're not there day one. That's the main point distinguishing between hard services and soft services. Sewer and water are needed day one, no argument, but the recreational facilities are needed down the road.

To Richmond Hill's credit, they cash-flowed a lot of things to keep their charge down. Thank goodness they did, but unfortunately they have \$2,000 a pop for park purchase. That's the one area I criticize in my town. They're paying from the left pocket to the right pocket \$400,000 an acre for parkland. It's nuts. They can go two miles north of town and buy—I won't look at Mr Cherniak. They can buy a lot of land just north of town, 10-fold—

Interjection.

Mr Nelson: Yes. No. Anyhow, Bill 98 provides the necessary controls; it doesn't preclude the municipality from doing.

The Chair: We must end it there; I'm sorry to interrupt. Thank you very much for taking the time to come this afternoon. We appreciated hearing your advice.

We now come to the Hamilton Home Builders' Association with Mr Campbell, I believe.

Mr Peter Goldthorpe: Madam Chairman, if I could beg your indulgence, my name is Peter Goldthorpe from the Ontario Home Builders' Association. I'm expecting my members from Hamilton. They were scheduled for 3:50; they have not arrived yet. I can do the presentation at your wish or if the next speaker is here—

The Chair: Shall we go ahead with the next speaker. All right. From Stamm Economic Research, then? No, not here either? Okay. Why don't we take a recess for 10 minutes. We'll be back here at five to 4. Thank you for that.

The committee recessed from 1546 to 1559.

HAMILTON HOME BUILDERS' ASSOCIATION

The Chair: If we could come to order, please, our next presenters are from the Hamilton Home Builders' Association. Welcome, gentlemen. You may begin.

Mr Adi Irani: Good afternoon. My name is Adi Irani. With me is Ward Campbell. I'm a consulting engineer from Hamilton and Ward is a builder. We work in the residential construction industry in the regions of Halton and Hamilton-Wentworth and we represent these regions in the land development committee of the Ontario Home Builders' Association.

On behalf of the builders of the Halton and Hamilton-Wentworth regions I would like to thank this committee for holding this meeting in our area. We really appreciate the extra effort, on your part, of travelling around the province to hear the views of people who are directly affected by development charges. I'd like to take a couple of minutes first off to give you a general context of the policy debate that has driven Bill 98 and then I'll turn the thing over to Ward to talk about some of the specifics in the bill.

To set the stage, let me briefly describe what has happened to development charges over the last 10 years. If you turn to the back of my remarks you'll see data for four different years for our regions. The 1985 data are for lot levies that were being collected under the Planning Act and the 1989 data are also for lot levies under the Planning Act. We have 1992 data which show development charges under the Development Charges Act and 1995 data that show the same charges as you progressed through a recession.

As you can see, levies in Halton were already substantial in 1985. They were at least double those in Hamilton-Wentworth, and by 1989 they were three times as high. This sort of inconsistency is one of the main reasons why we wanted a legislative framework for lot levies. Unfortunately we got a bit more than we bargained for when the legislation went into effect. For some municipalities it is almost as if the legislation sanctioned greater use of development charges.

As you can see, charges tripled and doubled in the Hamilton-Wentworth region and they nearly doubled in Halton. While these charges were increasing, housing starts were falling by 25% and 30% in our areas. The last column of data show further inconsistencies and highlight a major concern with the current legislation.

As you know, the housing industry has been badly depressed through the 1990s, so depressed, in fact, that independent housing consultants estimate over 100,000 families have not acquired the housing they need during this period. After the overbuilding that happened in the 1980s, it took a couple of years to absorb the excess units that were built, but by 1992 the market had reached its equilibrium.

Since that time, production has lagged behind real need as defined by population growth. These 100,000 units that should have been built represent housing for families that have been forced to live in overcrowded conditions, but they also represent something else. They represent nearly 300,000 person-years of employment that has been missed.

With the country slipping into recession and housing markets profoundly depressed, what did the municipalities do? First they doubled, then tripled development charges, and then in most cases they kept these charges high. They did this even after it was clear to everyone that the market was in a deep and prolonged depression. Some municipalities, it is true, were more responsible. In Hamilton-Wentworth the charges came down. The 1995 data include the newly passed education development charges, so the decline is even more for municipal charges than what shows up on the chart.

But many more municipalities maintained the charges or even allowed them to increase. Obviously there are lots of reasons why people have not been buying homes in the 1990s. But when you consider \$15,000 to \$20,000 development charges on \$160,000 homes, and that is to cite the minister's example, that is a big reason for a lot of buyers not to buy. These charges also help to undermine the economic viability of rental projects and they keep the private sector out of that part of the market.

It is clear to us and it is clear to the government that high taxes on housing are a barrier to affordability and to

job creation. It also seems clear that many municipalities cannot be relied on to exercise due restraint in the absence of provincial legislation. For both these reasons, we have recommended key changes to the Development Charges Act. I'll pass it over to Ward now to discuss.

Mr Ward Campbell: When the government first asked us what sorts of changes we thought were necessary to this act, we had a simple list:

- (1) restrict the scope of eligible services;
- (2) define "growth-related" in terms of benefits;
- (3) limit the level of service that can be financed through development charges to a historic 10-year average within a municipality; and
- (4) improve the accountability so that homeowners have some assurance that they will eventually get what they have paid for.

All four of these have been discussed in detail in the Ontario Home Builders' Association written response to Bill 198, which I'm sure you have.

Today I'd like to confine my remarks to the last two points. Regarding level of service, with some qualifications, the industry generally agrees that development charges are a reasonable way to finance the level of service in new areas that is the norm in the rest of the community. The operative term here is "norm."

To give this a little more precision, we have proposed defining an eligible level of service as the historic 10-year average. One of the reasons why we see high charges in some municipalities is that they take a peak level of service and they use that as their baseline to develop the development charges for the new areas.

Municipalities will tell you that this gold-plating is what homeowners want, but I'd like to suggest another reason for choosing the peak level as a standard. Higher standards mean higher property values. This means a richer assessment base, and it also means more affluent residents, which means fewer social services. Thus municipal politicians get the best of a number of worlds. Development charges finance showcase developments at no expense to municipalities. At the same time, this tax inflates the assessment base and keeps a check on the future demand for community services.

For some services, using a 10-year average will be a little more complicated in actual practice. But these complications are just technical in nature and they can be overcome and worked out. The alternative of using a peak level of service creates other problems: problems for young families that cannot afford homes and problems for investors who cannot get economic rents to coincide with market rents to make investment in rental accommodation. These problems are a lot more difficult to overcome than the others.

Now I'd like to turn to accountability. Let me begin by briefly describing the process to you. The use of development charges extends over a number of stages. The process begins with background studies that forecast service requirements and justify a total growth-related cost. The bylaw basically translates this cost into a per unit charge. Once the municipality begins collecting the charges it must keep the money in reserve funds and eventually must spend it.

Our objective is to ensure that the homeowners get what they paid for. This means ensuring that the projects described in the background studies get built. We believe the way to ensure this is to make every step of the process visible to the taxpayer. Bill 98 contains some very substantial improvements in this regard. But in other respects it actually weakens some of the accounting provisions that were introduced last year in Bill 20.

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We agree that the legislation should prescribe the content of the background study and how the calculations are made. We also agree that municipalities should be required to make this study available prior to the public meeting for the bylaw. We'd like to add a requirement that the service requirements identified in the study be included in the bylaw. In other words, a bylaw or a schedule attached to the bylaw should describe what is going to be built. We also believe that separate reserve funds should be required for each category of service.

As well, the annual reports should report spending on a service-specific basis. In this way, a person living in a new area could look at the bylaw and the annual reports and easily determine if the moneys are being spent as originally envisioned and what they paid for.

That concludes our remarks today. To sum it up, we discussed the impact development charges had on the housing market during the 1990s. Turning to specifics, we argued that the eligible level of service should be determined by a historic 10-year average, and we explained why the provisions for accountability need to be further strengthened. We thank you for your attention today and we'll be happy to answer any questions you may have.

Mr Sergio: Thank you for coming down to make a presentation to our committee today. The minister also said this morning that if development charges were to be reduced, this would spur the construction of new affordable housing or units, whatever. Do you think development charges alone would do that? Would your builders, developers or even yourselves go out and build strictly based on the elimination or reduction of development charges, or are there are a number of other things associated that should help you and would want you to go on the market and build rentals?

Mr Campbell: Are you referring to rental accommodation?

Mr Sergio: Affordable, yes.

Mr Campbell: Would the removal or lowering of development charges start us building? No, not on its own. Will it help? Definitely. Every time you reduce the cost of housing you bring more people into the market and you make it better for everybody. There's no question that the reduced charges will be passed on to the consumer. There's no question that the market is very intense right now. I know I have huge competition. I lost a deal today for \$1,000. If I could have taken \$1,000 out of it, I would have. There's no question it will get passed on to the consumer.

Mr Sergio: It doesn't seem a shortage of houses, some 400 builders or sites are out there, but there is nothing for so-called affordable housing, and there is a big need out there. What else would you like to see that would also

get you to build not only single houses or town houses but also affordable rental units?

Mr Irani: If I can answer that, one of the costs of housing is the process we have to go through to get approvals for development. In that sense we have always said that if you streamline the process, if you make it more efficient, that will reduce the cost to the developer to bring the product on the market. That will help in reducing the prices of houses, make them more affordable. That will go a long way as well. There are other things, the cost of land; the whole marketplace is not just on one aspect of this, but every little bit helps. If development charges are reduced, that will help in making them more affordable.

Mr Campbell: Specifically with rental housing, it is very important that two other things get done to spur the rental construction. One is that the municipalities equalize their assessment rates for houses. I have rental properties in Hamilton where I pay three times the tax that a person in an identical condo unit pays. It's not fair, it's not proper; it basically raises the cost of rents and makes them harder to do. The other is the GST. On a new rental accommodation I've got to pay a full 7% GST, whereas I don't on an owner-built.

Ms Churley: Thank you for your presentation. What would you say, in your experience, is essential for a viable community so that it'll be attractive to prospective buyers? You mentioned some of the gold-plating. Perhaps you could tell me what you as developers, in your experience, have seen that people, when they're looking for a new home, perhaps in a new community, want to know is going to be there in that community down the road to service them besides the necessary hard services.

Mr Campbell: There's no question that somebody moving into a community is looking for the amenities that are in the community. If I'm out looking to buy a new home I'm going to look at a community, I'm going to drive around, I'm going to see what's there and expect to have the same sort of thing in my community as what's there. I'm going to look at the entire town and see what's around.

Ms Churley: When you talk about, on the last page, that you'd like to see some amendments so that it's even — I'm trying to understand this. You say that "in other respects, that actually weakens some of the accounting provisions." Can you be a little bit more specific in what you'd like to see outlined and what kind of amendment you'd like to see?

Mr Campbell: Yes. We would like to see schedules attached to the bylaws that show exactly what was in the study, what was included in the development charge, what calculated that cost per unit. We'd also like to see the municipalities keep separate accounts for each one of those services — no problem to borrow between accounts and that sort of thing, but keep the accounting for each one there so that we know that they're actually building the things they said they'd build. If we see that, I think the consumer can follow that through and watch it.

Ms Churley: Would you have concerns in fiscal difficulties if you are limited, under legislation, to paying only for hard services and a municipality was unable to guarantee that later on down the road some of these other

services, what we call soft services that are so vital to a community, could not be built? Would that create concerns for you in terms of being able to sell?

Mr Campbell: No, it would not.

Ms Churley: Why?

Mr Campbell: Because that's a consumer's choice. If they want that service they've obviously — if it's not in the development charge, they've obviously received a lower-priced house to buy that. Then they have the choice of whether they want to pay to have that service put in their community.

Ms Churley: So as long as they know up front.

Mr Campbell: As long as they know about what's included in it, I don't think that's a problem.

Mr O'Toole: Thank you for your presentation. Just quickly, on page 3 there were a couple of points you made. I just want to verify that I heard you correctly. In your example you used a comparison between Halton and Hamilton, and on first inspection here it's clear that Halton has a very much enriched, it could be said gold-plated, development charge.

On that, you said: "...gold-plating is what homeowners want. But I would like to suggest another reason for choosing this peak as the standard. Higher standards mean higher property values. This means a richer assessment base."

Do you think this is kind of a deliberate part of the strategy of planning, that it has no relationship with the real cost of service? This almost sounds like something I'd be concerned about.

Mr Irani: I think that some of the municipalities want higher standards for their communities which are not the norm all across Ontario. They would like to see what we call gold-plated services. They don't have that level of service for the existing community, yet they want to enhance it for any new developments in new communities.

Mr O'Toole: Upscale development; is that it?

Mr Irani: It's an upscale development. There's nothing wrong with that. We don't oppose that in principle. We are just saying that is not something that should be imposed upon a new home buyer in its entirety. The new home buyer should, under development charges, come under a level of service which is existing or which is at the average for the last 10 years. Anything above that should be something the community as a whole wants. There's nothing wrong in upgrading that community to a higher level, but they should be prepared to pay for it.

Mr Hardeman: To Mr Campbell, at the start of your presentation you outlined four things that the new act should encompass: Restrict the scope of eligible services; define "growth-related" in terms of benefits; limit the level of service that can be financed to a 10-year average and improve the accountability so homeowners know they get what they pay for. In your opinion, does Bill 98 do those four things?

Mr Campbell: It moves a long way towards that. I say we would like to see the tightening up of the accountability provisions within the act. We don't think they're tight enough to really give the meat we'd like to see in it. Make the municipalities accountable for what they're

doing and what they say they're going to do. So we'd like to see strengthening in that regard.

Mr Hardeman: Do you envision that the 30% payment on some of the services is a good method of accountability for municipalities?

Mr Irani: I think that goes a long way in making them accountable, especially when it comes down to providing the types of services they ask for.

You asked the question — I was going to answer the first question — whether we are satisfied with Bill 98, how it goes with respect to accountability. I think we have made a couple of suggestions in the OHBA paper: that you set up separate accounts, and don't lump them together as only one account, for 90% services and another for 70% services. We would like to see separate accounts in that fashion. Also — I have forgotten what I was going to say, but that's fine. It'll come back.

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Mr Sheehan: The development charges are paid in sequence. Apparently with draft plan approval there's a percentage paid, and then when you get your building permit the balance is paid.

Mr Irani: It varies from municipality to municipality. Most municipalities will have it at the building permit stage. The region of Halton will take their hard services when you sign the subdivision agreement and the balance of it at the building permit stage.

Mr Sheehan: One of the charts given by Mr Nelson doesn't show any carrying costs for the money you put up on these development charges. Is that a significant item? Is the interest on the money you've paid out a significant item?

Mr Campbell: Sure.

Mr Sheehan: Why don't they include it in this chart?

Mr Irani: I'm not quite familiar with the chart.

Mr Sheehan: Do you have any idea what it would be, roughly?

Mr Campbell: It depends on the situation. If it's one where you actually pay it up front, no matter how you look at it, it still costs 6% to 8%, so you just compound it in.

Mr Sheehan: Would it increase the development charge by 5%, 10% or 15%?

Mr Campbell: Overall, most projects? Yes.

Mr Sheehan: On an average basis?

Mr Campbell: On an average basis.

Mr Sheehan: So it's not even in here, but it is another factor that's to be considered?

Mr Campbell: Sure, it is.

Mr Sheehan: In other words, the homeowner's paying for those things, not you guys?

Mr Campbell: Yes, they do.

The Chair: Mr Irani and Mr Campbell, thank you very much for taking the time to come this afternoon and for sharing your perspective on this act with us.

OAKVILLE CHAMBER OF COMMERCE

The Chair: Our next presenters are running a little bit late, so with your indulgence we'll move to the Oakville

Chamber of Commerce, please. Mr Paara and Mr Crossley, welcome.

Mr Andres Paara: My name is Andres Paara. I am the president of the Oakville Chamber of Commerce. Don Crossley is our executive director. Joe McAuley is one of the directors from our board. We probably won't take your whole time frame. We have a rather brief presentation. We are happy to be here and appreciate your time.

The Oakville Chamber of Commerce represents over 1,700 members of the business community within Oakville. Through its business and government affairs committee we have been studying the impact that development charges seem to have had on the ongoing growth of our community and the creation of new jobs. We noted with great interest the province's proposed legislation, and the following are seven points our board of directors submits for your consideration.

(1) The Oakville Chamber of Commerce is pleasantly surprised that many of the negative aspects of the previous development charges legislation have been dealt with in the new bill.

(2) The chamber agrees in principle with the objectives of the bill, which include promoting job creation and providing for increased municipal accountability while providing for the recovery of development costs related to new growth.

(3) The chamber wishes to emphasize that the new bill already represents a compromise between competing business and government interests on the cost-sharing formulas dictating what the development industry and municipalities must pay for growth. For example, the industry's view on discretionary or soft services was to share costs 50-50 with the municipality, while the bill suggests the costs be shared on a 70-30 basis in favour of the municipality.

(4) The chamber is particularly encouraged by the exemptions proposed in the bill for small industrial expansions, with expansions up to 50% of floor area being proposed to be fully exempt. We believe this will help to promote business activity and retain jobs within Ontario for small to medium businesses, which we feel are the backbone of the economy.

(5) Our chamber is very encouraged by the efforts of the province to provide uniform standards and methodologies and the tightening of the rules for determining average service levels as proposed in the bill, which we feel will enhance accountability to the public.

(6) The Oakville Chamber of Commerce recommends that a mechanism be established such that any reductions be passed directly to end users, be they home buyers or business occupants. By making the fee visible, accountability for the dollars is encouraged and it would be ensured that end users benefit from the savings.

(7) The Oakville Chamber of Commerce plans to make further recommendations directly to the municipalities that the planned reforms to local bylaws be implemented earlier than the 18-month time frame allowed by the bill to encourage local economic activity sooner. Thank you.

The Chair: Very brief. Lots of time for questions. In fact, and I just have to do some quick math here, we have just a little over five minutes per caucus. We'll begin with the NDP caucus.

Ms Churley: I don't know if I'll use up the full five minutes. Thank you for your presentation. Your mayor, the mayor of Oakville, was in this morning — and I'm sure you're well aware that she does not support this legislation — and spoke very vehemently against it. I wonder if you're aware of her concerns and if you agree with any of them.

Mr Paara: We are aware of her concerns. This is a situation where the chamber feels we may just agree to disagree with Her Worship on this issue.

Ms Churley: I tend to listen closely to everybody, of course, but in cases like this to municipal leaders who have a lot of experience in the area. She expressed really grave concern that, contrary to the belief that this will end up necessarily creating jobs and growth, in terms of some downloading that's about to happen, and nobody is sure yet what that will finally entail, and the 40% lost already from the municipal transfers from the province, the kinds of communities that people look for, when they're looking for a new home — sometimes people refer to it as gold-plating and others would say that a library isn't even necessary in a community; developers have different views. It's a planning exercise, and particularly in new communities people like to know what, beyond hard services and infrastructure, is going to be in their community.

There's real concern that the affordability of some of these things won't be there and the planning exercise that's so important is no longer going to be possible. I just wonder if you have any views on that at all.

Mr Paara: Joe, would you like to take that one? I'm happy to take it if you don't, but —

Mr Joe McAuley: Our belief at the chamber is that part of the strength of the community is having a strong business community to support the residential community as well. We have a number of examples that we could cite, which we don't have with us, though, where we know for a fact that we have lost some businesses coming into Oakville because of the high development charges. If industry and business and commercial do not move into our community, I believe that then the residential will not follow as well, nor is it a healthy community necessarily then either.

Ms Churley: One final question. Mostly we have heard from developers today, but we have heard from a couple of mayors and, interestingly enough, from some health and hospital advocates — we have one more coming today — expressing real concern about the need for hospitals to be partially covered by development charges. Hospital and health care, in their view, is as important as fire. Health care is so fundamental, and that's excluded. Do you have any comments on that? Because those are some of the areas we'll be looking at, I suppose, in terms of amendments.

Mr McAuley: That's getting into more detail than what we really propose here. I think that's beyond what we're proposing. I don't think we've studied to that degree that you're suggesting on where we should go with this. There are ongoing discussions that are going to come of this and therefore many of these details will come out.

Ms Churley: Sure. I'm asking because we will be suggesting amendments and that's fine if you don't have an opinion at this point. I think it is one concern you'll be hearing from this community where we might want to all think about making an amendment.

Mr McAuley: That's true enough. As we've said here, there is a compromise in here to start with, so we feel it's been addressed to some degree, but there must be ongoing discussion.

1630

Mr Galt: Thanks for the presentation. Anything that can be put on two sheets of paper makes it very, very worthwhile.

Ms Churley: Now keep your questions short.

Mr Galt: We'll do that.

I'm interested in your item 6, making the fee visible, accountable etc. I'd like you to expand on it, but just a couple of thoughts I have and then I'd like to hear from you. One relates to how we've heard great concern over, "Will this be passed on?" Then I'm starting to wonder, should it be an add-on, like a value added to the price of the house so that the new owner has to pay it direct and then we'll know for sure that they do get the reduction?

Secondly, we've heard a bit about hospitals and concerns that maybe hospitals should be getting some of these development charges as well. I'm sitting here thinking I'd prefer myself to donate directly and then I'd get a tax receipt. That would make it a little more accountable, as far as I'm concerned, than having it added on to the price of my house. A couple of thoughts that I had along this line, and I'm wondering what you were thinking as well in making the fee more visible.

Mr McAuley: We were trying to keep things out in front of people and therefore decisions are made based on that as opposed to lumping it in. Hidden costs are never good from a business point of view. The buyer, granted, might have a difficult time because the price is here and they think it should be here, because those prices are rolled in, and that's difficult for them. But I guess from a business perspective we'd rather have things out front and open where people can make decisions on, government can make decisions on percentages etc, and therefore the hidden cost goes away; people are up front.

Mr Galt: Just to pry a little further, methodologies: Would you have an itemized list of the cost of the new house or would you just simply add it on to the price after they've negotiated a price, add on the development charges? I'm curious on your thoughts.

Mr McAuley: The philosophy of hidden costs just doesn't sit right with us because then they can be manoeuvred. Once they're out in front — I agree with your tongue-in-cheek comments about having a list here. It's obviously ridiculous, but nevertheless, it's just a philosophical view that having them out front is a much more acceptable method, to see costs in front of us. I'm not sure that's answering it the way you'd like it answered, but the fewest hidden costs, the better for everybody.

Mr Galt: Yes, absolutely.

Mr Hardeman: Thank you for the presentation. Going to number 3 of your list as it relates to the copayment of 30-70, obviously it's been put in there to build in, I guess

one would phrase it as accountability, for municipalities. If they have a vested interest financially in it they will build to an acceptable standard that will help the community. The municipalities have been telling us that's inappropriate because it's unfair to put the 30% cost on the existing taxpayers. You, representing the chamber of commerce, are the existing taxpayers and you're coming forward with a recommendation. Your choice would be that it should be 50-50. Do your members not have a concern that 50% would be placed on their taxes?

Mr McAuley: We're always concerned. That's the problem with development charges: You either get it up front or you get it — it's a gentle balance. Whether 30% is right on is hard to say, but when it's a compromise from 50-50 up to 70-30, we felt that was a good move in the right direction.

Mr Hardeman: As existing taxpayers, you believe that there should be a copayment there, to hold municipalities accountable for a level of service?

Mr McAuley: Our thought is that the existing taxpayer is going to get some benefit out of this new library or this addition at the hospital or something of that nature. They're going to derive some benefits out of this, so the existing taxpayer should pay a portion of that rather than the new person paying 100% of it.

Mr Young: Several years ago, Ford Motor Co invested a tremendous amount of money to expand its paint plant here in Oakville. As I understand it, one shift of one vehicle is worth about 1,000 jobs. We came very close to losing that expansion because, as I understand it, the development charges were \$8 million. What would 1,000 jobs mean to your members' businesses in this town?

Mr Paara: Without Ford in our town right now, I'd hate to see what our economic picture would be. There's an economic study going on right now within Oakville to see what economic development will be and what the forecast should be for Oakville, but it has been very clearly laid out already that if Ford wasn't involved in our economic picture right now in Oakville, we wouldn't be in a very good position.

Mr Sergio: Mayor McCallion this morning said that you can't legislate — or you should legislate the price of homes. Do you think government should legislate the price of homes?

Mr Paara: I don't really know if we can sit here and speak to the residential aspect.

Mr Sergio: I don't think so, right?

Mr Paara: I think I can fairly comfortably speak on behalf of my members and say —

Ms Churley: You shouldn't quote Hazel out of context.

Mr Sergio: Going back to your number 6 — I like number 6, actually — how can we get down to business on this one here? Do you have any idea how I, as a new home buyer — let's say I'm going to get that \$5,000 reduction there — any idea how this could be implemented?

Mr Paara: We have had a brief time with our committee to review the bill. This is a recommendation without any specifics involved with it right now. Would that be fair, Joe?

Mr McAuley: Yes, I think that's fair.

Mr Sergio: That's something that you would like to see incorporated in the legislation?

Mr Paara: More specifics?

Mr Sergio: Yes.

Mr Paara: I think specifics are good.

Mr Sergio: Going back to your number 2, with respect to municipal accountability, we have heard some mayors here today say, and we have heard it on other occasions as well, that municipalities are run better than federal or provincial governments. What is wrong, then, if everybody says that municipalities are running the best level of government? Is it a problem with accountability or some item, let's say, that maybe some time in some municipality gets out of hand a little a bit? Could it be that just because some municipalities are charging maybe a little bit higher than normal or whatever makes the whole municipal government unfit? What's wrong with the accountability here?

Mr Paara: I don't know if you can make such a general statement as to say it makes the whole municipality unfit. What we're after is more of an even playing field, though, to work with.

Mr Sergio: Shall we be looking strictly to negotiate the development charges with a particular local municipality, instead of having blanket legislation forcing every municipality to comply? We're looking for direction.

Mr Paara: I think with the strength of the economy for Ontario being attracting business from outside, it would make sense to legislate it, yes, rather than having municipalities do it individually.

Mr Sergio: You don't think that the local municipalities, given the particular time, using their flexibility, could adjust those rates of development charges up or down to suit a particular need at a particular time? We don't hear anybody complaining now; everybody is selling homes, I believe.

Mr McAuley: I believe the municipalities will have input into rates, but the level playing field that Andres has made comment to, at least consistently across the province on what percentages etc are charged, that would be level across and therefore every community would be the same from that perspective. Each community is going to have to wrestle with the actual dollars per square foot, and therein there may well be a difference.

Mr Sergio: A few years ago, I'm aware of one particular municipality that said: "No charges whatsoever. Just come and build." They didn't. Why? No development charges whatsoever. Why?

Mr McAuley: It's either pay me now or pay me later. If you don't have a development charge to pay the upfront, then it's got to come out of the taxes. It can only come from two places.

1640

Mr Sergio: There was a particular time when the market was just not pulling for developers. The market had slowed down, there were no buyers. So wouldn't that be an attraction for a developer to say, "This is the time to go and do it; no development charges."

Mr Paara: It very well may be an attraction, but I don't think our members would believe that's the way to go either. As Joe said, you can pay me now or you can pay me later somewhere along the line, so it's finding the

most attractive way to do it so everybody ends up getting similar services.

Mr Sergio: So in this case the bottom line is the home buyer will have to pay. That's the way we see it, because there doesn't seem to be any mechanism in place, and that's why I would like to see a mechanism in place, where homeowners can look at that \$3,000, \$4,000, \$5,000 reduction, rebate, whatever. That would be an attraction for a homeowner, wouldn't it? Could you suggest a mechanism to do that?

Mr McAuley: I still think you've got to come back to the philosophical basis of development charges that you pay for what is new. If you're adding on to the system, then theoretically you should be paying for that new system.

Mr Sergio: What I hear really is that the bill as it is maybe needs some further changes, amendments.

Mr McAuley: Obviously it needs some adjustments here and there, as we've said. This is a very general statement.

Mr Sergio: Would you like to see the proposed amendments before the bill is brought in and approved by the government?

Mr McAuley: I'm not sure that's workable, but we've gone along with the compromise on some of these numbers and feel they're probably in the ballpark. Whether it's practical to come back to the community and get input again — if that's practical, that's fine. We'd certainly like to have more input as we go along.

Mr Sergio: To be the devil's advocate, 30% or 50% makes a municipality less accountable or more accountable?

Mr McAuley: I think you're taking words out of context, aren't you, sir?

The Chair: I'm going to have to interrupt at this moment.

Mr Sergio: I can see the knife is coming. Thank you very much.

The Chair: Gentlemen, thank you very much for taking the time to come before us today. I would also like to indicate that we've had a very hospitable reception here in Oakville and we appreciate that as well.

Mr Paara: You'll always get that here, Madam Chair.

STAMM ECONOMIC RESEARCH

The Chair: Our next presenter comes from Stamm Economic Research. Mr Garry Stamm, please. Welcome.

Mr Garry Stamm: I want to apologize for arriving a little late this afternoon. The Gardiner was more plugged than usual. I've also brought out a stack of reports that I'm going to refer to only once, briefly. First, I'd like to establish my bona fides a little bit with this matter.

I'm in the field of urban and regional economics. My association with development charges is about 25 OMB cases. My most recent clients on this subject were the Ford Motor Co here in the town of Oakville and the Chrysler motor company, currently having a bit of a fight with Brampton about development charges there.

What I've done is present you with a brief I hope you have. I've put everything into a three-page summary with respect to Bill 98 and I've attached to the end some

drawings. These are cartoon drawings. I don't want people to get too excited about them at the moment, but they're in there for a reason, because I'm trying to distinguish a point which I think is very important.

Over the years of controversy in the development charges area, we've had the UDI and the developers we've had the municipalities, and they've been battling back and forth as to who gets how much money, where and how and what from. Yet I think in all of this a very important set of constituents has been missed. Neither the developers nor the municipalities pay the development charges. The development charges are paid for basically by the home buyers in this province and they're paid for by people who invest in this province — by neither of those two parties. Developers don't pay them; they collect them back from their customers: the home buyer and the investor.

Ford Motor Co down the road — and I want to give you a very brief example — bought that land in 1953, when this was called Trafalgar township. They built their own 36-inch pipe from the lake all the way up to their site. They've never used any municipal services that they haven't given basically before they started. There are fewer employees there now than there were 25 years ago. Their trucking goes directly on to the provincial expressway. To replace their aged paint plant and put a new paint plant in place cost them \$6 million in development charges. Why? That's how this system works.

Did that system, I ask you, give investors a sense of confidence that Ontario is a good place to invest when you're paying \$6 million and getting, quite frankly, nothing back? I'm not here for the Ford Motor Co, nor for Chrysler. I'm here for a perspective which is rather different from the contending parties.

Annually in this province over \$50 billion, which is in the order of 60% of our total investments annually, are affected one way or the other by development charges. I think it's time that development charge systems are put in the context of necessary economic policymaking. In effect, the development charges, which began as about \$800 to \$1,000 in the early 1970s and have now reached as high as \$20,000 per lot in some municipalities, have become a tollgate system on investors. Ontario, over those great years, the economically prosperous years, said to people: "You want to invest here? First you pay us, then you invest." We are the only location in North America with a basically unregulated tax system handing over to the municipality the right to charge what they want. That uncontrolled system has gotten us into substantial difficulty, and I've been involved with getting those things resolved, case by case, for the last 15 years of my life.

Having said that, I want to tell you that Bill 98 is a substantial improvement over the act which existed heretofore that replaced the originally Planning Act provisions, so when I'm being critical, I'm not being totally critical. This is a step in the right direction; it just doesn't go far enough.

If I may ask you to turn to my brief for a moment, number 4 on page 2, what I want to say to you is that the bill enacts legislation which is still seriously deficient in critical respects about what constitutes an effective

Development Charges Act, an effective way of financing municipal capital expansion in Ontario. I will focus on those improvement matters rather than on anything else.

Number 5: In taxation, you may be aware there was the Ontario committee on taxation, the royal commission held in this province in the 1960s. There are two basic methods of taxation: One is called "ability to pay"; one of them is called "the benefits received." Both deliver equity. The problem with this bill is that it does not yet come to the point where it delivers an economically efficient tax which is also based on a benefits-received principle of taxation.

The concept of development charges is that he who ends up requiring the cost should be the one who bears the burden. This bill does not do that. Particularly in the way this bill reworded its subsection 2(1) from the original act, it broadens it out. It says if you're within the area where the bylaw applies, you pay. Whether you should pay or not or whether you in fact impose any costs or not is not relevant. If you're in that geographic area, you pay. There is nothing in this act, nothing promised in the regulations which says that if you don't impose a burden then you won't have to pay. This act is simply a method of delegating to municipalities the right to tax. I suggest to you that's an economically ineffective thing to do and it doesn't deliver the equity that is essential, in my view, to a sound taxation system.

The bill fails to enforce the critical connection between specific development lands — let's take the lands north of the Glen Abbey Golf Course over here — and those costs that relate to the servicing of that land. This simply throws everything into a hopper and says, "We'll all sort of pay something." The trouble with that is that those who impose no cost to the municipality pay lots and those who impose a great deal of cost pay less than they should. It does not lead to a system which delivers equity to the home buyer who ends up buying those homes.

What's more, the system also seriously lacks in accountability in a manner which is rather different from what this bill produces. I've brought these reports. I just want to wave them. These are the development charges pertaining to the town of Oakville, with only one of them missing. I've got them all. I just saw the author walk out of the door of the hotel here about half an hour ago. They're all here. Let me tell you the results that it got historically.

1650

If I may now ask you to turn to the drawings, the first one is past the text. If you have that drawing, what you'll see is a map. On this map I've drawn up every capital project for which development charges were being extracted from the developers after 1980. That goes back now some 17 years. One would think, if you take a look at Oakville, those of you who know this municipality, have watched it grow, that by now these projects would have been built and you would think that by now these people north of the QEW would have paid this and that would be the end of it.

I can tell you, if you turn to the very last drawing of my set, which is the 1993 development charges in Oakville, seven of the 10 projects for which this municipality has been collecting development charges since 1980 have

never been started, never mind finished. Eighty per cent of the capital total value, which goes with the projects that I listed on the page after the first drawing, for which people have paid development charges has never been put into capital works at all, at least not in the projects for which it was supposed to have been spent.

After 17 years, where is the justice, never mind the peace, between the people who paid all these development charges living north of the QEW who did not get the capital that they paid for?

The next question is, where did the money go? You're sitting to the north of a lot of it going along the Speers Road area. The largest single project throughout the history of all of these capital projects, study after study after study, is the Speers Road bridge over the creek in the west end of Oakville; Twelve Mile Creek, I think it's called. That's the most expensive single project in every list. It was never built. That bridge has never been built and in 1993 it doesn't even show up any more as a project to be built. What happened to it? Twenty years' worth of Oakville development of all sorts and descriptions paid for a bridge that was supposed to connect Speers Road through to Burlington. The bridge isn't there and the money isn't around any longer either.

What I'm saying to you is that the system we put in place that lets us charge development charges on the basis of some arbitrary standard made up God knows when, so many fire trucks per 100,000 population or whatever, has given us a system which really constitutes a tax up front for capital which is then used as the municipality from time to time may deem fit. It does not in fact constitute a proper system of charges at all.

If you were in the state of Colorado you'd understand that they have rules that are very strict with respect to how these things are collected, who pays for what and how it's to be calculated. This province has had — and I must say, for reasons not of municipal misconduct, don't get me wrong, but because the province never put in place a regulatory system under subsection 19(1) of the existing act that forced the municipality to calculate levies in a certain manner which delivered equity and guaranteed that the capital would in fact be built.

Never having done so, there's no accountability. What was collected 20 years ago or 15 years ago no one cares less about any more — except I do. I think the system deserves better. I think it needs to be handled much better if economically it's to be made effective and to be made just for the people of the province.

The recent effort to tinker, if you will, in Bill 98 with 70% and 30% and 10% down — I understand now it's 100% for something. I saw the article with the mayor of Richmond Hill in the paper this morning. I talked to him about it a couple of days ago at the Royal York. I think that's tinkering forever. What we need is a direct system of engineering calculations — it's not hard to do — which says that for every area of land development that is identified by an official plan and/or a secondary plan, there will be a capital budget created and those lands will pay the cost of that capital budget down the road. In the interim, for sure, if a capital budget is created and approved by the OMB, the municipality is obligated down the road to actually build that capital work. Other-

wise, people pay and pay and pay, as they've done in Oakville, and don't get it back.

So what I'm suggesting for changes is the following:

Many of the things that are suggested to be done by regulation in this bill should be in the bill. I'm on page 3 of my brief. In particular, I would like to see a clear statement in the preamble of the legislation which sets out that the purpose is to have that land which benefits from the costs incurred pay for those capital works. I don't care if it's 100%. If that land needs it, that land should pay for it. That's fine with me and that's fine with most developers I know too, as long as they aren't paying for somebody else's bridge, but rather they pay for their own.

The implication of this is that the system of development charges requires that different development areas of a municipality will be treated differently and will be paying different charges. That's okay. Some areas of the municipality don't need the bridge; other areas do. Those things are not hard to figure out or calculate and in many parts of North America there are mandated methods by which that sort of thing is calculated. Colorado I think is the best in the transport area.

I recommended that you change subsection 2(1) of this bill. What it says at the moment is disconcerting to me, or at least the people in my profession. It says, "The council of a municipality may by bylaw impose development charges against land to pay for increased capital costs required because of increased needs for services arising from development of the area to which the bylaw applies." If the municipality does, as it will, declare the entire municipality the area, everybody pays it even though not everybody benefits.

In my respectful submission, section 2(1) is a taxing provision, not a development charges provision. I'm not even sure if the province has the right to delegate those powers to the municipality under our Constitution, but that's what it does. It's a taxing provision, it's not a charging provision. It doesn't say, "Pay us for the capital you need." This says, "If you're in this area, you pay regardless of whether you need it or not." I can show you bylaw after bylaw in this province, Brampton's being the most recent, which actually says you pay the amount whether you require it or not. That's section 5 of the Brampton bylaw.

I would suggest to you that it be replaced by a statement which says that you can charge them "against land being developed or redeveloped to pay for such required capital costs as can be demonstrated to be needed to provide for expansions to municipal services which arise from the development of that land." In other words, if you're in an area which needs that bridge, you pay for it. If you're not, you don't. It isn't hard in my view, doing a lot of official plan and secondary plan work, to figure out who needs what.

Let me go to recommendation 2. The legislation should require that in order to have a development charges bylaw, a municipality must construct from its long-term official plan and secondary plans, which are mandated in this province under law, a 20-year capital works program. A difficulty we have is municipalities do a one-year capital works budget — they have sort of a five-year

forecast — and they're collecting for things that they don't intend to build for 20 years. There is a mismatch in timing. If you're going to let municipalities charge people money for capital works that they want to build 10, 15 years down the road, at least make sure the municipality has an approved 20-year capital works budget, that it relates to those particular works. We don't have that. Why not extend the requirement of capital works out for the same length of time for which we expect people to pay for capital?

(3) To assure proper accountability, the connection of the development charge to the 20-year capital works programs is most useful. Capital works therefore don't become simply cases of wish lists. I could take you through these five volumes; if you want to see wish lists, have a look. I provided the summary of it beside each drawing in the back of this document to indicate what it was each time that we wished to have and in the end of course abandoned and spent the money somewhere else.

(4) The level of service of this 10-year amount I suggest is also another bit of a side venture and should not be permitted. I would think that one should have regulated Ontario standards and not have each municipality choose and pick its own; regulated Ontario standards as to what constitutes the necessary capital standard for our residential developments and for our industrial developments. Otherwise you end up with a municipality that wants high standards, such as Vaughan, for example, next to one that's prepared to accept lower standards in competition, and that causes a dysfunctional economical land use pattern. Why would we allow such taxation arrangements to be all over the map in a competition environment within the GTA? It causes a GTA-wide land use dysfunction that finally takes a depression to wipe out.

(5) Furthermore, the provincial standards should not be allowed to vary among municipalities in order not to distort the sound economic development of land in metropolitan areas like the GTA and like Ottawa.

I think we have to look at this very carefully, having each local area decide: "This is a wish list. We can make somebody else pay for it" — people who aren't even here yet; investors who aren't here yet and house buyers who aren't here yet — "so let's just go ahead and do it."

(6) Perhaps most important, the development charges bylaw ought to commit the municipality to the construction of the capital works for which development charges are proposed. This is the dearest to my heart when it comes to the word "accountability." Only in this manner can it be assured that those who pay the development charges actually ever receive the services for which they've paid. That connection assures the full accountability which the public deserves.

1700

Those are my recommendations. They come to you from many years of being involved in the trenches and the struggles and the battles over these issues.

What's required is not tinkering with the existing Development Charges Act but the connection of that act back to basic principles of taxation. We have in this province a very good source for those. We had a commission in 1968 known as the Ontario Committee on Tax-

ation, a royal commission which is still used as basically textbook across North American universities. In that particular volume they recommended against the use of development charges except in certain cases. I still fully concur with the recommendations they had made. If we're going to have them, fine; let's control them very rigidly.

Mr Galt: I think you've answered, actually, most of what I was curious about in the beginning as you proceeded along, but I'm still sitting here a little flabbergasted that money has been collected, they've then changed direction and decided not to build those bridges or whatever, and money was never returned and there was nothing in the act to require its return.

Mr Stamm: Billions upon billions of dollars in this province in the last 20 years.

Mr Galt: Do you have any suggestions? You had suggestions on how to overcome that in the future. What about teeth to make sure those dollars do go back?

Mr Stamm: The ones that were there before?

Mr Galt: Yes.

Mr Stamm: They're long gone. The moneys that were collected in Oakville for the areas north of the QEW were spent, by and large, to improve the Cornwall-Speers Road corridor to the south of here. In other words, 77% of the money that was collected from the north of Oakville went to projects in south Oakville. That's where we got the lakeshore improvements and the Rebecca bridge improvements from. It was collected for projects in the north and spent on the Rebecca Road bridge in the south. The money is gone.

Mr Galt: Because the statement is for the municipality as a whole, not for their specific area.

Mr Stamm: No. When the funds were first collected, based on the charts I've given you, in each case they were collected for the capital projects for this list; for example, here's one list I've provided, and the Rebecca bridge doesn't show up on it. But when it came time to spend the money, that's where it went, because there's nothing that prevents it from being done.

Mr Sergio: I really enjoyed your presentation. Thank you for coming. You mentioned the inequalities within the tax system in the GTA and so forth. We have this problem within the GTA and Metropolitan Toronto. I'm sure you're well aware that Metro is subsidizing the tax base in the regions, and we would like to see that eliminated and have a level playing field. Do you think it's important enough for the government to do exactly that, bring some equity between the GTA and Metro? I don't want to sound too parochial.

Mr Stamm: Yes, indeed. One of the problems that's led to those inequities, though, is that in the outer areas the level of capital services, because of the method of financing, have become extremely high, higher than the economic income capacity of the outerlying areas can afford. So how to go about doing what you're asking cannot be done just through development charges changes.

Ms Churley: I have no questions. Thank you for your presentation. Your enthusiastic and knowledgeable presentation is just too complex an issue for me to even begin, in one minute, to address.

Mr Stamm: All right. Let me give you one thing you might want to think about.

Ms Churley: But I must say I don't agree with it all.

Mr Stamm: You don't have to. But do you agree with Ontario getting major jobs and huge investments?

Ms Churley: Absolutely.

Mr Stamm: If you do, I can tell you that I sat there —

Ms Churley: He's asking me the questions. If there were more time — I do have some agreements and some disagreements, but it really is not possible to get into it.

Mr Stamm: What you'll find is that over the years this province lost two huge, \$100-million-plus investment projects of Ford Motor Co because international Ford said, "We're not paying it." I was there.

The Chair: Mr Stamm, on behalf of the members of the committee we very much appreciate your time today. Thank you for the information you've presented.

TAXPAYERS COALITION BURLINGTON

The Chair: Next we will hear from the Taxpayers Coalition of Burlington, specifically Mr Rivers. Welcome.

Mr Ray Rivers: Thank you, Madam Chair. Taxpayers Coalition Burlington is a non-partisan organization that advocates value for taxpayers' money. Originally founded in the early 1990s, our membership has been as high as 600 and is currently in excess of 200 members today. Our president, Hugh Doull, is a former executive with a large Canadian construction company, and our membership and executive includes representatives of the business community as well as others, including the real estate sector. I myself am an economist.

Taxpayers Coalition Burlington is loosely associated with the Ontario Taxpayers Federation and even more loosely associated with the Canadian Taxpayers Federation. To the degree that those organizations speak to provincial and federal governments, we restrict our focus to the municipal level of government and to municipal issues. However, we have appeared before this committee and we are here today again because of proposed provincial legislation that we believe obstructs or interferes with the ability of municipal governments to be more efficient and to deliver lower property taxes and municipal service charges.

Taxpayers Coalition Burlington believes we have been effective in convincing municipal governments to keep taxes down, and we believe that even the province has heard us on issues. For example, we were pleased to see proposed amendments to the Education Act with regard to conflict of interest following a suit that the coalition had initiated against a number of Halton public school board trustees on that very issue.

However, we believe this government is dead wrong on Bill 98. Passing this legislation as it stands will lead to inefficiency in the housing market, reduced international competitiveness, increased traffic congestion and pollution in Ontario and higher taxes for residential and other property owners. It is bad economics, unfair to taxpayers and implies a major tax hike for residents of this province.

There is no issue that has occupied the efforts of the Taxpayers Coalition as much as the demand that developers pay the full costs of new development.

The history in Ontario is that prior to the Development Charges Act, which was introduced back in the late 1980s, and the imposition of lot levies some time before that by many municipalities, the infrastructure costs of new development had been largely paid for by the general taxpayer. Our society had deemed that urban growth was a priority following the Second World War and all levels of government had undertaken some degree of subsidy with general tax revenues at that time. But times have changed.

The tax increases that accompanied the high rates of growth, especially in the 1970s and 1980s, are the result of governments interfering in the housing and development industry with subsidies. The justification that was used by past governments to subsidize housing, which has led to our highly taxed society, was that all growth is good or that growth should be pursued at any price. The myth that the benefits of growth will always exceed costs was supported by subsidies for new development that overbuilt infrastructure and then moved on to even greener fields for even newer development.

It is not that growth is necessarily bad, but that it should pay its own way if it is to be efficient and not leave a burden for others. Our policy states that existing taxpayers should not have to pay for the costs of infrastructure required to accompany new development.

Subsidizing development in the past has led to inefficient development, mostly in the form of urban sprawl, which is the most inefficient form of development one can have. Studies completed for this government by the Golden commission point to the inefficiencies and much greater economic, social and environmental costs to our society that are inherent in greenfield urban sprawl. This is exactly the kind of development that will be stimulated, encouraged and subsidized under the bill as it currently reads. The subsidy provided in the bill will encourage continued urban sprawl rather than renewal of the inner cities of Ontario.

1710

I have attached an article from the Great Lakes Commission, which is an eight-US-state agency established in 1955 to promote the orderly, integrated and comprehensive development, use and conservation of the water resources of the Great Lakes Basin. In the article David Crombie, commissioner of the Waterfront Regeneration Trust and a highly respected Canadian authority on a number of topics — I know you know him — especially municipalities, write, "Undeniably, urban sprawl as we know it is not ecologically sustainable over the long term."

The community impacts of the proposed legislation are negative for everyone but the developers. As already noted, this legislation will encourage further urban sprawl, with the consequent effects of greater traffic congestion, higher levels of pollution, disconnected society, high service costs and increased taxes.

Subsidies create market distortions and lead to inefficiency. In the end, they are bad for business. The proposed legislation would have the effect of taking money out of

the pockets of the existing residents in a community and giving it to the developers.

The developers, depending on market conditions, may pass on some of that subsidy to the new residential or business occupant through lower prices. But both business and residential taxpayers will ultimately suffer the effect of increased property taxes as a result of this subsidy.

The property resale market will be disadvantaged by this legislation, since the existing building owners' property value will be lowered by the additional supply of artificially priced buildings coming on to the market, subsidized through taxation. The effect will be to lure buyers towards the lower-cost, subsidized properties rather than using and renewing existing structures where high-cost infrastructure is already in place, underutilized and already being paid for by the general taxpayer.

When a new development is created, the residents of that community expect to have schools, roads, water and sewer services, arena and community centres, libraries and other services available for them at a level at least equivalent to that which exists in the rest of the community and municipality. Clearly the developer, and ultimately the resident, should be responsible for the costs to create those living conditions in their community. Subsidization by others in the municipality is unfair and inequitable.

There is a need for development charges legislation in Ontario. However, Taxpayers Coalition Burlington recommends the following:

(1) Enshrine the principle that new development must pay its own way.

(2) Articulate the policy that all capital costs for infrastructure required for a new development, whether that be education, community and recreational services, roads, sewers, water, fire, police and public transit services, and any other services that the province deems to be the responsibility of a municipal level of government, ie, public health, welfare, long-term care, are the sole financial responsibility of the development applicant and proponent and not of the municipal level of government.

(3) Mandate that municipalities establish municipal development charges policies and bylaws consistent with the provincial legislation, setting rates for alternative classes of new and renewed development based on projections of growth and development as set out in their official plans.

A development charges fund should be created and made available to fund the cost of development-related activities, including the full costs of planning, legal and accounting services, and building and development approval processes associated with new and renewed development; in other words, the full costs of development.

(4) Restrict municipalities from paying for any portion of the cost of new development except through the provision of available development charges funds, collected entirely through levies on new development projects, sufficient to meet the financial needs of any development project that is to receive approval. Municipalities should not be permitted to undertake new works for a planned

development unless there is sufficient development charges funds to complete those projects.

In conclusion, Taxpayers Coalition Burlington joins with the many municipalities, including Burlington, that have denounced the proposed legislation as inefficient and unfair to the residents and taxpayers of Ontario. Enacting the legislation as it stands will ensure continued inefficient land development and higher property taxes for Ontario, reducing our productivity and making this province less competitive in attracting new business opportunity to Ontario.

Forcing municipalities to pay a subsidy to developers runs counter to other initiatives by the province to give municipalities a greater say in governing themselves, and it imposes an unfair tax burden on their residents. As such, it strips municipalities of their legitimate rights, responsibilities and authority in this matter. I'm referring to the copayment.

Finally, this legislation mandates and imposes yet another tax to be paid by the general property taxpayer in growing municipalities, a tax that gets paid off directly to the developers. Instead of being a tax fighter, it makes this government a tax hiker. Instead of making Ontario more competitive, we will become less competitive. Instead of fairness in development, we see the developers turning an unfair profit at the taxpayers' expense. We urge you to change the bill.

Mr Sergio: Mr Rivers, thank you for your presentation. When we are talking of building a brand-new community, what do you envisage as the most important, first and foremost amenities that should go into that particular community there?

Mr Rivers: The most important?

Mr Sergio: It could be a school, it could be a church, anything else we should have in the particular community other than street lights and stop signs and stuff like that.

Mr Rivers: I think they're all important. A community expects to be a community. It expects to have schools in place. In our community, in Burlington, until recently we didn't have development charges for education; as a result, there have been numerous conflicts over the whole issue of building new schools in communities that simply had not been planned for.

Mr Sergio: The previous speaker, Mr Stamm, said that previous development charges were paid but never used for the intended use.

Speaking from a municipality's point of view, if we were to allow a developer to come in and bring in roads and sewers and start building and selling homes, leaving the community practically naked of those amenities important to the social fabric, such as libraries and community centres and swimming pools and what have you, that particular community will be paying taxes, and in many cases high taxes, for many years without the benefit of those amenities. Do you think it's fair that we put that particular community in such a situation?

Mr Rivers: No, I don't think that's fair. I also don't think it's fair that the general taxpayer would be building those facilities for a community, putting in the capital costs for them. That's the point. It's basically inefficient and it leads to higher property taxes within the community.

Mr Sergio: So it's not a question of accountability on behalf of a particular municipality. We see from other bills that the province wants to discharge a lot of its responsibility on to the local municipality. Here, I don't know if it was you or somebody else who said we are imposing on the local municipality to do certain things. Well, either you allow the municipalities to conduct their business and let them be responsible to their taxpayers or you continue to be responsible for those particular services.

I believe the local municipality down the road will have to be forced to be more responsible, if you will, if they are not responsible now, towards developers and taxpayers, if they want to attract more tax base, if they have land that is staying idle. Would you say that if you are a developer and you are approaching Mississauga, for example, you make a deal with Mississauga instead of having blanket legislation which would tie your hands and force you to do certain things?

Mr Rivers: My view is that the municipality should be required to charge for the full costs of development, and I've outlined those.

Mr Sergio: Or have the flexibility, maybe, to either charge or get the money from somewhere else?

Mr Rivers: Currently, that's what happens. Municipalities do make exemptions, they make provisions, whether it be business development charges or whether it be residential. We have opposed those. The taxpayers coalition has been resolute in saying that the full cost of development should be borne by those who are developing. It's the only fair thing to do.

If you have a municipality, you have a new community that is developing within, and it is imposing costs on the rest of the taxpayers in terms of getting established, those are properly the costs of the developer. They should be borne in the price of the property that is sold. Otherwise, you're subsidizing and creating a market distortion that will come back to haunt you in terms of overbuilt infrastructure, underpriced. It distorts not only the new market but the existing market as well; as I mentioned, the resale market of houses. The way to get rid of that is to simply ensure that the full costs of development are paid for by the developer.

1720

Ms Churley: I'd say hallelujah, Mr Rivers, that you brought up urban sprawl today, because I think over time we're going to hear more about that. This is the first day of the committee hearings, and we've heard mostly, on the whole, from developers today, who of course have a particular perspective, but the urban sprawl issue is a major one. When combined with Bill 20, which you might recall was the government's changes to the Planning Act which literally removed almost all of the environmental protections within that act and not only, I would say, doesn't discourage urban sprawl but encourages it, promotes it, in combination with this bill, you're quite right to point out that we have to think beyond growth at all costs. I thank you for bringing another element into the discussion we're having today.

I wanted to ask you, because we're just here in this area for the day and because we have heard predominant-

ly from one side of the issue, although a little bit from mostly health advocates, what you think overall is the position of people from this area. Do people know about this bill? I know how your mayor feels about it. She made it very clear, believe me, this morning. But the government is going to have to make some pretty fundamental decisions about the amendments. There are some people who would like to see it withdrawn, particularly the mayors. I'm just wondering if you feel this is overall a popular bill with the ordinary people, or do they even know about it?

Mr Rivers: I wish I could say that everybody is totally informed on it. I don't think that's the case. There were newspaper reports, particularly when Mayor McCallion came out very strongly and loudly against it, and of course Mayor Lastman and our own mayor in Burlington — I'm in Burlington actually — came out against it as well, and the taxpayers coalition supported the position of these municipalities.

What they find most inequitable and unfair about this is the requirement that they have to subsidize new development. They find that highly unfair, that a municipality is kind of — it's approving a development on the one hand, but it's also going to have to supply money to the infrastructure, and that's only 10% in the case of hard services, but it becomes 30% in the case of soft. They find that very difficult to deal with, and as a taxpayer, I have a real problem with that.

Let me just comment on the sprawl, because you mentioned it. Urban sprawl is the most expensive form of development. It is why we have high development charges. Oakville here has some of the highest development charges in Ontario, and the reason for that is because it's very expensive to build out into new green-field areas rather than simply using existing capacity that is there. The studies that were done for the Golden commission and others that have been done indicate that what we want to be doing if we're really concerned about competitiveness and more efficient cities is to build our downtowns, not to go and continue out with the outer sprawl. It's costly, and we see the ramifications of it. To get around Burlington and Oakville now — the Queen Elizabeth is one of the most congested highways anywhere, and it's because we continue to sprawl new development out there and they have no alternative but to use automobiles.

Mr Jerry J. Ouellette (Oshawa): Thanks for your presentation. You said that the full cost should be borne by those who are developing. Don't you think the users should have any costs or bear any costs in there as well?

Mr Rivers: Yes, absolutely.

Mr Ouellette: The statement said that the full costs should be borne by those who are developing, but I think the user in a facility should be one of the people who pays as well.

Mr Rivers: I'm not quite sure what you mean by "the user."

Mr Ouellette: If there's a sports arena, if you expect the developer to cover the full cost of it, you can't ensure that only individuals moving into the area are the ones who utilize that facility.

Mr Rivers: What I meant, and I think what I said, was the full capital cost, the cost of the infrastructure, to build the infrastructure.

Mr Ouellette: As was emphasized by the previous presenter, do you have any methods of determining where those current costs, development charges, are being spent or how they're being spent?

Mr Rivers: I think the previous speaker hit on some of the problems with it. Nobody says the existing system is perfect. We're both economists. I would agree with him on a couple of points, one being that they're clearly moving towards more marginal costing of development charges. In other words, where there are identifiable costs out there, you should clearly identify them and do the sort of front-ending that can help eliminate a lot of the difficulties. The creation of large funds is not necessarily ideal. But he also noted that there was a timing difference, and that's why you need a development charges fund, because the development that happens today may not necessarily result in the kinds of costs that we see implemented a few years later.

In Burlington, for example, our sewage treatment facility is over capacity currently and will be even more so in the near future. To deal with all the developments that have gone in, it's going to require many millions of dollars worth of enhancement. It really means we need to have some way of collecting from those people who are contributing to its ultimate need for renewal.

Mr Ouellette: I'm surprised there weren't more groups that have presented that actually have a developmental charges monitoring committee, as we heard last time we were in Hamilton.

In your community, are you finding that there are underserved or overserved areas?

Mr Rivers: I think that exists in any community. Principally the older areas are the ones that tend to have lower service levels. I live in Aldershot, which is a very old part. It was formerly Hamilton; it is now part of Burlington. We don't have storm sewers to any large extent, not on the street I'm on; no curbs, above-ground wires. That doesn't exist in any of the new developments. I don't think that happens.

Mr Ouellette: You don't think it happens?

The Chair: Excuse me. I'm sorry, we're out of time. There are more questions waiting to be asked, but time is of the essence at this point. Thank you very much for taking your time to come today to present your thoughts to the committee. We appreciate it.

YORK COUNTY HOSPITAL

The Chair: Next we'd like a presentation from the York County Hospital, Mr Kuula, please. Welcome. You'll have 20 minutes in which to make your presentation.

Mr Terry Kuula: I'll be very brief. As you can see from the outline I've presented to you, I have three major points on behalf of the tri-hospital York region planning forum.

The history of capital funding to hospitals has been predominantly from the provincial government. They have always been in place to give us two thirds, or 67%,

of all capital funding, with one third coming from the communities. As of July, on the first point, a decision was made by the provincial government to reduce its capital project funding down to 50% and increase the community's share up to 50%. This has put a particularly big burden on the community, since it was an arbitrary change, totally unexpected by hospitals.

The second point: In York region, as in all of the 905 areas, we have seen rapid and extraordinary growth. That growth, as you see on page 2, over the next 10 to 15 years will exceed 50% in a lot of cases, and on average for the 905 you'll have 45% growth. The understanding of the dollars from the development charge is it's for the development of the capital infrastructure and it's to grow those hospitals in those areas to accommodate the increasing needs of the community. Right now the physical plant in a lot of these facilities is deteriorating rapidly and the expectations on the health care system are increasing. So we have them going in opposing directions and the capital dollars needed to keep the growth, not just to maintain it—the maintenance is the hospital's responsibility but the growth is a very particular interest to us.

1730

In York region, as you'll see in point 3, we just had an acute care study done and the district health council of York region has recommended in that acute care study that \$70 million be invested in renewing, in the growth in hospitals, in the health services capital infrastructure. If you take the example, that now from the ministry's point will be reduced to 50% of that, or \$35 million. So \$35 million will have to come out of the region, and with no development charge, as is proposed, York region would be in a very serious state or deficient in their capital funds.

Essentially, and specifically regarding the proposed legislation, we'd like to see hospitals move from the ineligible list under clause 2 to the eligible category in 5(6).

On behalf of the York region tri-hospital planning forum, I thank the committee for listening to us. We urge you to amend Bill 98 to allow for the inclusion of hospitals as a necessary service, as is the case with the police and fire stations; we feel we are as essential as them.

Ms Churley: You may have heard me mention that there have been a couple of other presentations today on this very issue. I don't know if you all got together first and discussed this or not.

Mr Kuula: No, we did not.

Ms Churley: Even if you did, it's okay. I think the fact that there were so many of you out today gives a clear indication that this is a major issue for you here.

Mr Kuula: Very much so.

Ms Churley: As I also keep saying, mostly we've heard from developers today, but you're the third on this issue. I think there's not a whole lot more to say about it except that I support that and I think the government is hearing loud and clear from the presentations today how important this is to the area because of the growth.

This is my question to you: I assume you're concerned that if this is not included, and you see it as a major

component of a community, you're going to be in trouble here essentially.

Mr Kuula: That is very correct.

Ms Churley: There's going to be a crisis.

Mr Kuula: Right now we as a tri-hospital group have received permission to put in an MRI, magnetic resonance imaging, and the region has put \$500,000 towards that. They've also funded York county specifically for their day surgery, same-day admit, which is the direction the Ministry of Health is taking on deinstitutionalizing patients and putting them into more ambulatory areas. The region has given us \$238,000 for that. York Central has got a regional dialysis unit and they have received \$375,000. So all in all in the last year we have received \$1 million from this development charge, and it's been significant to us.

Ms Churley: Is it a possibility or have you tried sitting down with the local developers to get some support? Because I know today at least they have spoken against anything except the hard services being included.

Mr Kuula: I have not known of any that has happened, where the tri-hospital forum has actually sat down with the developers, but that would be a good case —

Ms Churley: I think it would be a good idea if the local developers recognized what a problem this would be for the community. After all, they operate within this community and, I'm sure, feel some responsibility. It might be helpful to get them on side and make them aware more thoroughly than today. There was one here earlier who didn't even know what I was talking about and basically just came out and said, "What have hospitals got to do with development?" So I think that might be helpful.

Mr Kuula: In a recent survey, accessibility to health care was the most major concern to people in this country. With growing populations, if we don't grow in step to provide the services that they require — and again, it's an expectation — then we fail in our efforts.

Ms Churley: We are talking about, and this was discussed this morning as well, hospitals and health care, that that's essential to a growing community.

Mr Kuula: Yes, the hospital infrastructure.

Mr Galt: Thank you. Just a question to you as a taxpayer, a new home buyer or whatever: If I donate to a hospital, I get a taxable receipt.

Mr Kuula: That is correct.

Mr Galt: But if it's a development charge, it's just an added expense.

Mr Kuula: That's correct.

Mr Galt: Why would I want a development charge when I can make a donation to the hospital and get a receipt and save income tax?

Mr Kuula: Every year our foundation embarks upon a major campaign. We raise approximately \$1 million through the foundation. We self-fund approximately \$2 million, so we have a \$3-million capital plan within our hospital alone. That only maintains the capital equipment required to keep the existing services.

To go beyond that scope, to go beyond and grow — we have about a \$40-million plan to put in a new building to keep things going — is far beyond the means of the local taxpayer. The local taxpayer is already funding

and they're already paying. They're putting forth that \$1 million in our area, so we don't see where they could actually come up with the additional 40 times that amount over time to keep this funding going.

Mr Galt: But do you think a young couple just buying a home would be able to support it all?

Mr Kuula: They do it on a one-time basis. They are the ones moving into the area. I don't mean that in a very cynical way, because we choose where we live, but the people existing in the community now have already funded that facility. Because the facility must grow, the burden should now be placed upon everyone to grow. It's not necessarily just the individuals who are moving into the community, because there are other factors that come in, but they should pay a portion of it.

Mr Hardeman: Thank you very much for your presentation. I just quickly wanted to go to the issue you just mentioned: They are the ones moving into the community; they should pay their share of this growth. As my son or daughter is moving into your community, they have paid their share of health care in the province already. Why do we feel that as they move into a new part of a community, they should pay for more than their share of the growth of the health care system?

Mr Kuula: I wouldn't call it more than their share, but the problem is, if they could take that portion of the hospital or the health care infrastructure where they were and move it with them, we wouldn't need the dollars, but we know that doesn't happen.

Mr Hardeman: I guess that is really the question that I wanted to go to: Do you believe the municipality can charge development charges for health care, for building a hospital, when they have no control of where and when hospitals will be built? The concern I have is that, as previous presenters have said, municipalities can charge development charges and then never deliver the service to those people they charged.

The hospital one would be a prime example. They do not control the building of a hospital. They charge for a hospital in your community. Everyone has paid \$3 million or \$4 million and the province decides not to build a hospital there because it's not appropriate or not required. Do you think that's an unfair charge to those homeowners?

Mr Kuula: For the government to say that it's not required would mean that the population statistics would not be there to support the hospital. I contend that if the population was there, the ministry would be hard-pressed not to build that hospital. That's one point.

The other point is, in York region only about \$200 to \$300 or \$400 of the actual development charge goes to hospitals. Of the \$6,000 or \$7,000 per unit, only \$300 to \$400 actually is allocated to the hospitals, so it's not that significant an amount.

Mr Hardeman: But if at the end of the day the \$300 or \$400 goes to upgrade the hospital in the present buildup area of the municipality rather than in the new part, do you deem it appropriate and fair that the new home owner paid another \$400 for a service that everyone else benefits from and to the same extent as the new home owner?

Mr Kuula: As you know, the Health Services Restructuring Commission right now is in a move to close a lot of those hospitals and make the accessibility of hospitals — I don't want to say equal to all, but the availability will become somewhat limited and the convenience is going to become limited to everyone.

When you say from one area to another, our region extends — our hospital is in Newmarket and our region extends well up into Georgina, Lake Simcoe, Keswick and those areas. There's no intention of building up there. We are proposing to put a satellite up there to help those people, because it is an underserved area and it's been well recognized under the acute care study. But again, the dollars for that will come predominantly from all of York region, not necessarily just from the Keswick area. I probably haven't answered your question, have I?

Mr Hardeman: So in your analysis up to this point, is there a connection between the development charges that have been charged for hospitals and where the restructuring commission is putting new hospitals?

Mr Kuula: I don't think the restructuring commission will ever put in a new hospital. I think what they're going to do is take the existing facilities, as they have in Thunder Bay, taken five and moved them into three; in Sudbury, they've taken four and moved them into two or three; and down in Metro, we know they've closed 10 and made two ambulatory. So they won't be building any new hospitals. They'll probably just be expanding upon the new services. In Sudbury, they intend to put 300 beds into Laurentian. Up in Thunder Bay, they're going to invest \$140 million into an existing facility. But those dollars are dwindling fast. Realize that it's \$140 million in Thunder Bay and in all of Metro they've only allocated \$130 million. The rest of that has to come from the community.

Mr Sergio: I'll just say congratulations on your presentation. I really don't have any questions. I've been listening to your comments and the answers you have to give, and I'm satisfied. I support your concerns and I hope the government is listening and will make those changes.

Mr Kuula: I don't know about listening.

The Chair: Thank you very much, Mr Kuula. We appreciate your taking the time to bring your perspective to the committee today.

1740

DALEROSE CORP

The Chair: We would now welcome Mr Bryk from the Dalerose Corp, please. You have 20 minutes to make your presentation, including questions from the committee.

Mr Ted Bryk: My name is Ted Bryk and I am the president of Dalerose Homes. For the last hour or so I've been sitting here listening to the deliberations, and I find them very interesting and informative. One thing though: I'm going to be bringing a different perspective. I'm going to be bringing the perspective of the tax collector because as the builder I am the tax collector.

Our company has been building homes since the mid-1980s — I myself started out in 1971 — in com-

munities throughout the greater Toronto area. We currently have a 119-unit, freehold townhouse project under construction right here in Oakville, just up the road, called Trafalgar Ridge.

Our firm is very involved in our industry through the home builders' associations. I myself served as president of the Greater Toronto Home Builders' Association in 1984. I also served as president of the Orangeville Home Builders' Association in 1992, and in 1994 I was proud to serve as the national president of the Canadian Home Builders' Association. I am here today with my Dalerose Homes hat on, but I will be drawing on some of the information and experience I have gathered through involvement as a local and national president.

First, let me admit that I am not familiar with the intimate details of Bill 98, as maybe Mr Stamm was. I am, however, intimately familiar with the details of building homes, and as a home builder I know that in the last six years the cost of building my product has been going up steadily at the same time that the price I am able to command has been going down.

The goods and services tax and the 1991 Development Charges Act have both been crushing blows, coming as they did when our economy and our industry were in a steep downturn. In a fiercely competitive business, a lot of us builders have gone under, and those of us who remain are working for cash flow and praying for profit.

As a home builder, I know that the buyer ultimately pays the price of any government-driven cost increases. We work on a pro forma basis, where all costs are determined as part of setting the final price. If the costs dictate a price which is too high for the market, we'll return to the drawing board and change the product. Either way, the consumer pays.

As a builder, I can also tell you that development charges have come to represent a major cost factor in my business. Since we're here, let's use the town of Oakville as an example. In 1993, in the middle of the longest recession our industry and this country have ever experienced, the town of Oakville introduced a proposal to increase its development charge by 86%, from \$5,674 to \$10,591, overnight. The industry, of course, reacted with shock and outrage, but the reality is that Oakville was no different than a lot of other municipalities in the GTA. Oakville was simply taking full advantage of the legislation passed by the Liberal government at the height of the boom.

In the end, after filing an OMB appeal and 18 months of negotiations, the industry was able to achieve a reduction in the charge to \$6,900. But you have to remember we still have to pay the Halton regional charge as well as the Halton education development charge, so development charges on a single detached home in Oakville are still approximately \$14,000. This, my friends, is not a pittance. It begs the question: What is this money for? Is every last nickel essential or could the charges be reduced with a little honesty on the part of the municipality? Are we servicing wants or needs? Can we afford the long-term operating and replacement costs of the facilities we are building using development charge dollars?

Let's look at Trafalgar Ridge, which incidentally is targeted at first-time buyers. To get this 119-unit project off the ground I wrote a cheque to Oakville for more than \$1.4 million to cover the local, regional and school board levies. This is before I paid for all the roads, all the services, all the parks, the improvement, the widening of Trafalgar Road, the stoplights. I wrote a cheque for \$1.4 million for the privilege of building in the town of Oakville first-time-buyer, freehold townhouses.

To put that number into some kind of perspective, I can tell you that the people who have bought these homes are scraping by as first-time buyers. They have scratched and clawed to come up with the down payment and they are as scared as they are excited. The scary part for me is that most of these people have less down in their house, with the five per cent program, than it cost me in levies per unit.

As past CHBA president, I recently received a comprehensive national study of levies, fees, charges, taxes and transaction costs on new housing. This is the report; I hope it's available. It was produced by the Canadian Home Builders' Association; it's a cross-Canada study.

Let's play a little trivia here: On a \$217,900 house in the city of Mississauga, what do you think the various costs I just listed would amount to? Anyone want to hazard a guess? Well, let me tell you that it's a whopping \$45,486, or 20.9%, of the total purchase price. One more example, the city of Vaughan, which you heard about: On a typical detached home there the total charges are \$50,326, or 21.9%, of the purchase price. It's all well documented.

I ask you, are things out of whack? I certainly think so. I read an article in the Star the other day where David Lewis Stein seemed to be paraphrasing the mayors in arguing that builders won't pass on any savings from lower development charges. I have several reactions to that: These same mayors kept on raising development charges when house prices were going down. Would they like to sit in my shoes and take the risks? Do they understand that with profitability comes reinvestment, comes jobs, comes growth? Have they noticed there are literally hundreds of housing projects throughout the greater Toronto area engaged in stiff competition for a still very cautious home buyer?

Please remember one basic premise: I, as the builder, cannot influence the market price. New homes are less than one-third the total market. The resale market dictates price. My competition is the used-home market. When I'm confronted with government-driven cost increases, I have to speak out. Why? Because these cost increases severely reduce my ability to compete with the used market. The GST is the classic case of a tax which put me at a severe disadvantage with the resale sector.

On the other hand, the land transfer tax rebate introduced by the provincial government last year is a direct benefit to my customers and makes me more competitive with the used market. Don't think for a second that I raised my prices \$1,725 to reflect the rebate the customer would receive. That is a totally and utterly foolish thought. In fact, that \$1,725 they were getting back went nicely to cover the educational development charge increase that the homeowner was hit with.

If the municipalities are so concerned that the savings are not going to be passed on, perhaps they should collect the tax and be directly accountable to the purchaser. Then they could compete with each other to attract growth. I don't want to collect the tax. If you want the tax, you collect it. Don't think I'm going to keep it, because all I am is a tax collector.

1750

If a no-growth attitude prevails, then raise the tax so no new housing or businesses are built. Simple solution to the advocates of no growth: If you raise it up high enough, you won't have anything and everybody is happy. All the growth will go right by you.

In closing, I want to reflect on some of my observations when I travelled across the country as president of the Canadian Home Builders' Association. In all parts of Canada except Ontario and the lower mainland of BC, most industry people, when I spoke, thought the DCA, when I referred to the Ontario experience, was a new model of an earth mover. They didn't even have one idea what a DCA was. When I would relate to these listeners the level of taxes we paid to our municipalities, they were aghast. In fact, these guys, when you go out to central Canada or the Maritimes, used to get aghast when the building permits went up \$50. When I told them what we were paying for development charges, for the privilege of building in that municipality, they just asked us: "Why are you there? What are you doing business for?" Good question.

Also, in most jurisdictions the DC in Oakville or Mississauga would be greater than the total cost of the serviced lot. You ask, why are house prices cheaper in so many other parts of the country?

My appeal to this committee is to recognize Bill 98 as an attempt to bring some sanity to a system that is out of control. I think Mr Stamm really brought that to light.

I don't have any specific recommendations for you, just a general urging to be sure that you come down on the side of lowering development charges, but consider the tax to be fair and accountable, and consider affordability — because it's the homeowner who's going to pay for it — and the creation of jobs and economic growth.

I'll close by telling you that for every one of those 119 town houses I'm building up the road, I'm creating roughly two and a half full-time jobs per year, approximately 300 jobs. If you want to go and see something, just go up there on any particular day and see the number of men and women working there, the supply trucks and all the machines and equipment going in. I created the jobs, not the government. I put my money on the line, not the town of Oakville. I gave them the money. So this is where the job creation occurs, by the small business. Let's not lose sight of the fact that a small business is taking the risk and creating the jobs, not any level of government.

Thank you for your time today. I'd be delighted to respond to any questions you may have.

The Chair: We'll begin with the government caucus, Mr Clement, for questions.

Mr Clement: Mr Bryk, thank you very much for your explanation of your industry from your point of view. An earlier presenter, Mr Cherniak, I believe it was, refer-

enced in his written submission that these development charges are akin to a drug: Once the municipality gets hooked on it, it's very hard to extract itself. One could go so far as to say that this is the crack cocaine of municipal finance that we have here. I wanted to know how you felt about that. Have you been dealing with municipalities that seem to be always increasing development charges never decreasing them, and have you found the same resistance that Mr Cherniak found in terms of trying to extract these municipalities from clearly outrageous development charge schemes?

Mr Bryk: I've had a lot of experience in talking to municipalities. I've been active very vocally locally in my position as president.

Two things happen. One thing that really gets to me is when municipalities are in competition with each other for who's got the highest development charge. I didn't realize it was a contest, but believe me, when you go into some municipalities — and you don't even realize it — they're saying: "Down there, they charge \$18,000. How come we can't charge that?" "What is this, a contest?" I keep saying.

The other aspect is that they've always got the idea that we're taxing a new person coming into the community, "Let's get them." Do you know the project up there, 119 units? Do you know where most of the people are coming from? They're the sons and daughters of all the parents living in Oakville — 80%. So who are they shafting? Their own. They're not coming in from Saskatchewan; they're just moving across the street.

Somebody was talking about hospital zoning: "Let's shaft them. Why? Because they can't speak." The whole object of the game is — I don't care, I'll tell it to any politician — if you can keep your tax base low, no matter where you get your money, you'll keep the electorate happy. How many times we're going through and they have not raised taxes? But have they gone ahead and done the other cutbacks municipally that we've seen the other levels of government do? As long as they have that fat cat — the development charges — they can keep on and they can brag about a 0% increase.

But they have never laid off. I challenge anybody to show me any municipal government in Ontario that's laid anybody off in the last few years while the provincial and federal governments have been doing cutting, because they've got the development charge.

It's a beautiful tax, and that's all it is. And I'm your tax collector. I'll tell you, I just keep passing it on, and you think I'm going to swallow that? Forget it. But I have swallowed it when the marketplace comes down, the resale market comes down. Do you think I can sell my house for \$200,000 when across the street you can buy a resale for \$175,000? The consumer is not a fool. He'll buy across the street. So what do I have to do? And forget whether I paid the GST, which is another horrendous hidden tax, and a development charge.

That's why I say put the development charge tax up front. All my homeowners don't even know what they paid for the DC. I myself wanted to go ahead and show it as a tax on closing so they could see that they're paying \$14,000. And then they start asking, "For what?" "Oh, your contribution to the hospital, your contribution

to the school." "But I paid that with my parents." "Sorry, you're the new boy on the street." Let them see it, and it be accountable to the municipality. Then they'll see what it's like to feel they're the home buyer.

Mr Clement: Do you want to weigh in on this, Mario?

Mr Sergio: You really answered all my questions. Thank you for coming down.

Mr Bryk: Thank you very much for listening.

The Chair: Thank you very much, Mr Bryk. We appreciate your taking the time to come today.

MONARCH CONSTRUCTION

The Chair: Our final presentation today is from Monarch Construction, and we welcome Mr Bryan. You've been waiting patiently. I know you know you only have 20 minutes. Welcome.

Mr Mike Bryan: My name is Mike Bryan and I'm the last delegation before you.

The Chair: Last but not least.

Mr Bryan: Last but not least. I would like to thank Gordon Wong of the ministry office for being so helpful in coordinating my appearance before you today.

Since I am appearing last I will keep my presentation brief. I have purposely not made my presentation technical in nature but rather anecdotal and general.

A short introduction will probably help the committee understand what influences have shaped my presentation. I am presently employed as a vice-president with Monarch Construction Ltd. Monarch is a public real estate company based in Toronto which is engaged in the fields of residential land development and new home construction throughout Ontario and the United States. The Monarch group of companies is also engaged in the development, construction and management of a significant diversified portfolio of industrial, retail and commercial properties in and around the GTA. I might add, Monarch was founded in Toronto in 1917, and in 1996 recorded its 56th consecutive year of profitability. I can honestly tell you I am not in any way responsible for the company not being profitable 57 years ago.

My personal background is that in the past 24 years I have worked for only two different employers. I was employed by the city of Burlington for 15 years in progressively responsible positions and was the assistant director of the building department when I left to join Monarch Construction nine years ago.

I was educated in community planning. I have a diploma from Sheridan College and a degree majoring in urban studies from York University.

Having worked in government I can look at these issues from both perspectives. Some of the brightest people I have known work for government, but protocol and the system often prevent them from achieving maximum results despite their significant personal skills. I can tell you that the decisions I am able to make today, with a minimal amount of involvement from my superiors at Monarch, would be envied by my former municipal colleagues. I therefore say to you that this government's move towards privatization is the correct one. I would caution however that too much haste could ruin a good idea.

Municipal governments at both levels have significantly changed the way they operate in the 1980s and 1990s. The affluence that came from increased development and tax revenue during the 1980s and the introduction of the Development Charges Act in 1989 resulted in a more aggressive bureaucracy at the municipal and regional levels that was going to provide their public better and more bountiful services with this revenue. You need only to look at the quality of municipal buildings and parks and the facilities that have been provided to get a feel for what I mean. Even the hydro commissions got on the bandwagon.

The problem is that at precisely the time municipalities were given greater powers to demand money for a wider range of uses and increase their standards dramatically, the economy was entering the longest continuous recession in a very long time, and I caution you now: This minor recovery we are experiencing is directly related to low interest rates and the fact that government is finally starting to steer the economic ship in the right direction. A change in the interest rate structure, based on external factors such as the economy in the United States, will stop this recovery. Witness the mini-recovery in 1994; it stopped abruptly as interest rates increased.

1800

But from the mid-1980s to the present, development charges doubled and in some cases tripled. New charges for hydro and education were also added on top of municipal and regional development charges that had doubled and tripled. To add to our misery the province, through its ministries, was creating new and expensive standards in environmental, transportation, planning and building code areas, all increasing the cost of providing serviced land and the time in which to provide it.

Finally, to conclude this litany of woes, the federal government, almost singlehandedly, brought housing to a standstill with the GST. What better tax than a tax on housing? All of a sudden land, which is not a manufactured item, was taxed on the same basis as building materials. When I reflect back on my public service, I am sure my colleagues were not trying to hurt our citizens by increasing their cost of living so dramatically. There seems to be this feeling that new home purchasers are new residents, so why not let them pay, but a large percentage of them is not. They have lived in the community as renters, homeowners or sons or daughters. Mr Bryk referred to that, and the delegation from the hospitals took the opposite view: "They're new, so why not hit them?"

What has been the result of change in the way municipalities viewed new growth? In Halton, for example, industrial and commercial development has had to contend with one of the highest development charges in the province. This is the total of regional, municipal, hydro and educational development charges. Consequently, in the new growth areas there is virtually no growth.

Regional development charge revenue for new industrial-commercial uses is a small fraction of all development charge revenue, thus infrastructure projects that are required do not have the necessary funding. Consequently, the region and municipalities are forgoing much-

needed tax and fee revenue that new growth provides. Employment growth in Halton lags behind virtually any other metropolitan region in the GTA. I would suggest that if the Ford Motor Co were looking to locate their assembly plant today, they would not choose Halton.

On the residential side, the development charges are also one of the highest in the province once again, especially when you compare the development charge to lot value. A \$15,000 development charge is easier to absorb on lots worth twice or three times the value in the Metro area than in Halton. These examples apply throughout the province.

Regarding the proposed legislation, it is certainly on the right track. The soft side of services is out of control. Copayments will curb the desire to gold-plate projects. Many extravagant facilities would have been scaled down considerably if the taxpayer had to contribute to the funding. Examples such as wave pools are nice to have, but why should they be built on the backs of new home purchasers or the new industrial-commercial project that provides new tax revenue and employment?

The priorities of municipalities have somehow altered over the years. It used to be that affordable housing was encouraged, but this is increasingly difficult to provide when well over 10% of an affordable home goes towards development charges and the cost of bringing the unit through the approval process. The length of the process adds to the cost of providing housing.

The acknowledgement that new facilities serve the existing community is essential to bringing some restraint into the provision of services. Often the municipal sector justifies these splendid facilities by stating that this is why new people come to the community, because of the services. I can tell you that with these hard times the average consumer is still facing, and will be for the foreseeable future, the lowest price is the most important aspect of the purchasing decision. Mortgaging \$15,000 in development charges is not a welcome proposition.

With respect to the contribution to hard services, there is no doubt that the existing community benefits from most hard services, and I understand there was an announcement on that today. You should know that nowhere in this development charge debate, or in the calculations used to determine development charges, is there any recognition of the large sums of property taxes that are paid for undeveloped lands held for development, or developed but vacant lands, ie, lands that consume no services. In effect the 10% contribution may be substantially covered by the development community in their taxes from their land holdings. In the private sector it is often said, "I don't mind spending money to make money." Not so in the public sector, and this is clearly shortsighted.

Recognizing net capital costs and acknowledging that capacity serves the existing community is not just a good idea, it is fundamental and it is fair. The accounting principles appear on the surface to provide the groundwork for a fair accounting. Bringing surplus funds from previous development charge bylaws into new bylaws is also fair. Mr Stamm clearly indicated the problems involved in that.

One aspect of the legislation that does not make sense and goes against the principles of fairness fostered in this legislation is the forgiveness of section 14 credits, credits which were earned prior to DCA 1989. These credits can be substantial and were provided by contract for the provision of external services which benefited the community at large and other developers. Why should they be lost? This is unjust enrichment to the benefiting municipality. Under any other reimbursement situation some form of reimbursement would have been made. That's a tough sentence. I'm not a lawyer — that must be why you are being so nice to me — but this is clearly breaking an agreement between parties.

I ask this committee to help return this province back to prosperity and help provide its citizens with affordable housing. Create jobs and revenue. Get the construction industry back to work. Stop the aggressive spending of development charges by recommending the changes proposed in this legislation. Thank you very much.

Mr Sergio: I have enjoyed your presentation. You were supposed to be short, but you took your time. I have listened very patiently and I've enjoyed what you said. I don't agree with everything you have said but I appreciate your coming and exposing your views as a developer. I also don't think that everything is fine out there and I think there are some areas that need to be rounded up. Again I thank you for having come. Let's hope that by the time the hearing is over, we can have some reasonable amendments so that both sides can be happy.

Mr Bryan: Thank you very much.

Mr Carr: Thank you very much, Mike, for your presentation. You've got an interesting background. You have served in the public sector and seen both sides of it, which I think brings a really interesting perspective because you have had that other side of it in working. I knew a little bit about your background but I didn't realize it was so detailed. Many of the other presenters have come and made passionate speeches, as the previous gentleman did.

One of the questions we keep getting asked is what will happen with regard to where the money will go with development charges. A lot of them are saying it won't go back. Some of the other presenters have talked about the competitive nature versus the resale market and how competitive it is, which may account for it. Is there anything else you can talk about regarding what will happen to development charges when a lot of people see it just going back to the developers and that it won't be passed through? Are there any assurances you could give? How do we see it working, bringing both your perspectives to the table?

Mr Bryan: I just think that perspective is a 1980s perspective that no longer applies. Monarch Construction is a company that has banked land over the years, so we have fairly good margins in certain situations when we have historical land. But I can tell you that the way we're selling it now, it's not sustainable to keep it going. There has to be an improvement in the profit margins in our industry. A company like Monarch, which through its resources over the years is able to invest wisely, has been able to weather the storms of what's happened in the industry.

1810

This industry is crippled. This industry is hurting. The margins are terrible. Lumber, for example, in the past year has gone up \$6,000, \$7,000; there's not been \$6,000, \$7,000 in price increases. I just really think there's a lot of blatant envy from perhaps the 1980s and some of the things that have happened over time. I really believe we're in a new era. That's what's happening. You're going through the very difficult task of restructuring everything because it needs to be restructured. We've already done it and we've streamlined and we've done all the things we've had to do.

Mr Stamm's comments were very appropriate. I have seen the way governments have changed, I have seen the way they have just gone from providing basic needs to being excessive, and that has to stop. There isn't the room that people think there is in our industry, and the winner will be the consumer. I can't guarantee that on every single example. Obviously, when you get into higher-priced homes, that might not be as appropriate. But I can tell you that most of the customers out there today, as you are very well aware, are first-time home buyers and every penny counts.

Mr O'Toole: I appreciate your presentation and your unique perspective, the first one today anyway. I just want to have you reaffirm that you're saying that when the development charge process came in it was sort of a get-rich-quick phenomenon, that you think the level of service, without any qualifications, has gone up substantially.

Mr Bryan: Tremendously.

Mr O'Toole: And now the ability to sustain that level is the problem when the economy itself has taken the other angle.

The one thing I wanted a little better understanding on is the whole theory of collecting the cost of capital over a bunch of acreage, a number of lots, that this is equal to the amount of capital we have to put in here. That's predicated on all the development going sequentially and kind of fresh, otherwise somebody's got to put it in ahead of the actual development. Usually it's the developer if he wants to keep moving. Is this really happening?

I'm not in the business but I'm saying okay, I've seen land that got hit in the early 1990s that's just now got the odd house on it, but somebody has been carrying all the cost of service in there big time, maybe 500 acres fully serviced, and taxed, by the way, not as agricultural but as land in development. Two or three have gone bankrupt on this one strip that I'm aware of, 500 acres. This isn't really part of this here, but they're almost forcing the developer to put in this bridge or connecting road, maybe even external, to make things work. Is this going on today?

Mr Bryan: There's a lot of front-ending going on. In Halton, if you flush another toilet you're out of capacity,

and it's a real problem. There are all kinds of front-ending things going on and all kinds of deals being made, and if a developer has a large investment and has to get moving to survive, he will come up with the money that is needed. So there's a lot of that.

Mr O'Toole: Do you have a problem with the whole idea of the capital, hard services as being completely a development responsibility? Are they inside the margins of their development? Who can argue with that, really? The hard services.

Mr Bryan: I believe there is a non-growth component to hard services. I've stated that today. I believe that, there's no question. But that is certainly —

Mr O'Toole: Hang on. You say there's a non-growth component to hard services?

Mr Bryan: Yes, a percentage. I'm saying there's a community benefit to hard services.

Mr O'Toole: About having a road inside your subdivision?

Mr Bryan: Oh, I'm sorry.

Mr O'Toole: Hard services.

Mr Bryan: No, we would pay for the whole road.

Mr O'Toole: The whole 100% there.

Mr Bryan: Yes, that would be reasonable.

Mr O'Toole: Soft, like libraries, fire and all that stuff.

Mr Bryan: And major arterials, major trunks, there's a community benefit to that. But certainly anything internal to your project, if it's not unusual, should be your cost. Growth should pay for itself. It's arriving at what that is. Right now we've lost our credit card and we want it back.

Mr O'Toole: I'm going to ask one thing from you. I appreciate the indulgence. On the soft services, let's say that today the level of service — I'm making this up — is one fire truck for every 1,000 people and you add 1,000 people in your subdivision. Now we end up charging you for one additional fire truck. But let's say now, because of the enrichment, we go to one fire truck for every 800 people. That 200 people — whatever that factor is for the cost of the fire truck, should be passed on to the existing residents. The rest is you, because we've got to maintain a level of service — police. You've got to maintain it, wouldn't you agree? We're not getting rich here.

Mr Bryan: It's happening all the time. In Burlington they went from a seven-minute response to a four-minute response. Growth is paying for all those upgrades.

Mr O'Toole: In that case there it shouldn't be borne by that development. It should be borne by the whole municipal structure.

The Chair: Mr Bryan, thank you for taking the time to come today. We've had some interesting presentations. Yours is the last, so we'll adjourn and reconvene tomorrow at 10 o'clock at the Radisson Hotel in Ottawa.

The committee adjourned at 1816.



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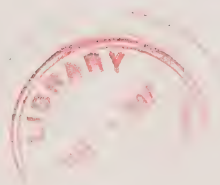
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Standing committee on resources development

Comité permanent du développement des ressources

**Development Charges
Act, 1996**

**Loi de 1996 sur les redevances
d'aménagement**



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENT

Tuesday 25 March 1997

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Mardi 25 Mars 1997

The committee met at 1006 in the Radisson Hotel, Ottawa.

DEVELOPMENT CHARGES ACT, 1996

LOI DE 1996 SUR
LES REDEVANCES D'AMÉNAGEMENT

Consideration of Bill 98, An Act to promote job creation and increased municipal accountability while providing for the recovery of development costs related to new growth / *Projet de loi 98, Loi visant à promouvoir la création d'emplois et à accroître la responsabilité des municipalités tout en prévoyant le recouvrement des coûts d'aménagement liés à la croissance.*

The Chair (Mrs Brenda Elliott): Good morning, everyone. I'd like to welcome everyone to the second day of the hearings on Bill 98, An Act to promote job creation and increased municipal accountability while providing for the recovery of development costs related to new growth. We're pleased to be here in Ottawa to hear delegations on the bill.

I would just like to remind everyone and draw your attention to the fact that the minister yesterday brought in proposed draft regulations. These are available at the table by the door and there are some on the table as well.

For any new deputants, the minister also announced yesterday that the government intends to move the following motion to amend Bill 98 during the clause-by-clause review: The portion that requires municipalities to contribute 10% to growth-related costs of water and sewer, roads, hydro, fire and police services would be removed from Bill 98, although the 10% municipal contribution towards transit and waste will await input from these hearings.

CITY OF NEPEAN

The Chair: Our first delegation this morning is from the city of Nepean. Welcome, gentlemen. We're pleased to have you. You have 30 minutes in which to make your presentation. It's always a struggle to find enough time for questions, but that will include your presentation time and questioning from all of the three caucuses equally. Welcome.

Mr Ben Franklin: First, I want to thank you for providing the opportunity to speak to you here in Ottawa-Carleton about our concerns related to a number of the provisions of Bill 98, ie development charges.

In order to understand the position of the city of Nepean, I would like to provide some background information about the city. Nepean is a city of 118,000 people, with a good blend of residential and commercial-

industrial development, situated in the western portion of Ottawa-Carleton. The city is home to a number of large employers including Bell-Northern Research, Nortel and others. We have grown in size and have sustained really, I believe, a steady fashion since the 1970s in terms of quality of life while continuing to create employment opportunities for residents of Nepean and Ottawa-Carleton.

Today Nepean is recognized as a leader in many aspects of the municipal field and is in the enviable position today of being debt-free. In addition, we have the lowest city tax rate in Ottawa-Carleton. Notwithstanding these two issues, we are proud to be in the position of providing excellent services and facilities to citizens of Nepean, but many of the facilities are used of course by people right across the region.

How have we achieved this? One of our primary ways was to eliminate any dependence on debt. I must say that one of the members of this committee, Bernie Grand-maître, can recall the days when it was said that Nepean had the highest tax rate and the highest surcharge on the water. We went through a few years of short-term pain for long-term gain. Notwithstanding that, we have today eliminated dependence on debt, thereby eliminating the payment on interest, using those moneys to provide services.

The second way was to adopt the policy that growth would pay for the services that it generated. This policy has been a fundamental element of development in the city since the 1970s. Today our neighbourhoods receive an excellent level of program choices in facilities paid for by their communities through the imposition of development charges. The city has provided little funding for new facilities other than when a facility would also provide extended services to the existing population. Our current development charge bylaw illustrates this concept through the allocation of costs of projects to the existing population for a large number of projects.

People in our city know that they have paid for their services and expect to receive the same level of service as the rest of the city in their new communities. I am concerned that the provisions of the new act will eliminate the ability to obtain these same standards throughout the community.

The city believes that the development industry and the city have a common interest: building affordable, healthy, well-served communities. Services go beyond those services that are the most basic in the development of a new house, ie sewer, roads, water etc, and realistically include those quality of life issues such as community buildings, recreation facilities, libraries etc. They are fundamental to communities.

Today, our development charge includes amounts to pay the full cost related to growth in new facilities. Under the new legislation, these services must be cost-shared — that is, with your proposed legislation — in an arbitrary fashion based upon no reasoned analysis of need but rather on a standardized formula contained in a provincial act. This approach obviously is in total contrast to the general policy of the city of Nepean. You are now asking me to tell residents that they should subsidize the price of new housing by providing services to new areas that they themselves fully paid for in their own existing communities. I can tell you and you can understand that this is not going to be an easy sell.

What will happen is that new neighbourhoods will not receive the same service that they expect to receive when new facilities are finally developed. They will be substandard; in other words, below standard compared to the other communities.

I find it interesting that this bill in effect provides a direct subsidy to the development industry through property taxation, notwithstanding the fact that the Municipal Act specifically prohibits bonusing of an industry in any manner.

While I believe that all growth-related costs should be paid by new development, I would like to focus on the situation in the city of Nepean related to certain hard services.

As part of new development in the south part of the city — and that's one of the main growth areas in Ottawa-Carleton — we are required under provincial environmental standards to store and treat stormwater prior to returning it to the river system. This requirement applies only to the new growth area. The costs of this activity are approximately \$30 million to service the new growth. The benefit related to these facilities is 100% growth-related. The storm drains are self-contained in the growth area and do not even flow through the existing system.

Notwithstanding this 100% growth identification, the new act will require existing taxpayers to pay 10% of the costs; \$3 million that they will now be required to pay for a service that they don't even use. This cannot be seen, really, as fair.

A similar situation exists in relation to other hard services where the city has identified portions of projects that are to be paid for by growth. As an example, our current development charge work plan identifies road works in the amount of \$11.5 million, of which \$4 million, or 35%, has been allocated to non-growth; in other words, existing taxpayers. A review of the projects indicates that every road project allocates at least 15% to the existing taxpayer. On top of this, the new act states that the existing taxpayer shall pay 10% of the remaining costs. Again, I cannot understand where the equity exists there.

The city of Nepean was one of the first municipalities in Ontario to pass a bylaw under the original development charge legislation. At that time, extensive information was shared with the industry before adopting a new charge. In early 1996 the city updated its charge. This involved a review of all the growth projects, infrastructure requirements and standards. The review was under-

taken on a collaborative basis with the home builders association and the building owners and managers association. The review required that both sides consider each other's positions and provided for a good understanding of growth-related requirements and resultant charge.

I believe both parties listened to each other, as there were changes made, and provided positive input into the ultimate result. The comments that were received from the two groups when the report was tabled with our council are enclosed in this submission and will be left with the clerk. I think you will find the results of the interaction and public meetings with the industry to be positive.

The 1996 review resulted in a new development charge that was reduced by \$5,381 per unit outside the south urban drainage area and by \$3,860 within the drainage area. These reductions were 55% and 39%, respectively. These reductions were made without the aid of any third-party legislative hammer and were achieved through meaningful dialogue of parties interested in the same goal: building good new communities.

I do not believe the proposed changes will result in better new communities, nor do I think they will achieve any meaningful change in housing prices in Nepean. The prices today after our reductions are very little different from one year ago. I do believe, however, the changes will result in new lower standards of service for everyone or arbitrary tax increases on those who have no involvement in new housing.

The impact on existing taxpayers will be very significant. The additional tax requirement for changes identified in the bill will cost the city \$18 million. This would require an immediate increase in property taxes of 7% in order to generate sufficient funds to build the required infrastructure over the next 10 years. I do not have to tell you how acceptable or unacceptable that would be to the public. Alternatively, the city could issue debt and again enter into a sinkhole that debt repayment has created for every level of government in this country. Again, I cannot support that option.

I have often heard the statement that new properties will pay taxes and generate new revenues for the municipality. While on the surface this is true, we all know that you don't make money on new housing, and the cost of servicing the new house actually costs the municipality more than it's bringing in in revenue. So that's not a very accurate statement.

The city currently retains 13% of the total tax bill, most of which is used to fund operating costs. The element that is for capital structures is primarily earmarked for replacement and rehab of the city's infrastructure. On an average tax bill of \$390, the amount that currently goes towards new capital items is approximately \$5. This will take many years' worth of contributions, obviously, to generate \$18 million.

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No one will argue that there is a need to make housing as affordable as possible. Transferring the responsibility for financing the structures required to provide that housing is not an acceptable means of achieving affordability. The solutions for housing should not include the

subsidization by other taxpayers in their property taxes, a method of taxation that every study has determined to be the most regressive of all types of taxes.

I believe there are opportunities to have the municipal sector and the development industry work together to achieve their common goals without the presence of further legislative impediments. I would urge the government to reconsider this bill and return to a legislative form that allows for consultation and cooperation in establishing the types of communities that both parties can be proud of for years to come.

As a suggestion — I might throw this one out — now that there seems to be some clarification and that school taxes are not going to be on property taxes, what you might wish to do is cancel the development fees in the area of education, as it's been very controversial and indeed the rules around it are quite different, as you know, from the rules related to municipal development charges, where you can actually collect money in one community and spend it in another community, even another municipality. That's something you may wish to take a look at if you are going to be looking at changing development fees. There would be a lot of support for that one, I can assure you.

The Chair: Thank you very much. Just for the record, I neglected to introduce you. It's Mr Franklin, the mayor, and Mr Russell, the commissioner of finance.

Mr Franklin: That's correct.

The Chair: We have 16 minutes for questioning and we'll begin with the NDP caucus. You'll have about five minutes.

Mr Gilles Pouliot (Lake Nipigon): Gentlemen, I note as I peruse the agenda that one Molly McGoldrick-Larson, a councillor from the same city of Nepean, is going to — what can we expect from Molly this afternoon? We won't tell anyone, your worship. Is it the same presentation?

Mr Franklin: This is the official one that was supported by council.

Mr Pouliot: I see.

Mr Franklin: I would be surprised if it's much different, though. I don't believe it would be the minority report.

Mrs Margaret Marland (Mississauga South): You can coach her over lunch.

Mr Franklin: That's an expression I use no matter who's in the current government.

Mr Pouliot: Your Worship, I like minority reports but unfortunately I know what their fate is.

You've talked about development charges and you've mentioned your city, under your guidance, your tutelage, is very proud: no more dependence on debt. With the downloading — because let's call it what it is. There's nothing that is revenue-neutral here; otherwise it would not be attempted. No elected government would roll the dice that often.

Do you feel that the city of Nepean, when all is said and done, when you no longer have to pay at the residential level for school taxes, but you, sir, will have to provide schools, you will have to bus people back and forth, and the litany, the lament of new services that you're about to acquire borders on the biblical, do you

see the city of Nepean in the future being jeopardized by your new role? Because I get the impression with these people here that it will matter little what philosophy the government du jour, of the day has, but it will matter a lot more where you live. So 118,000 people in the proud city of Nepean: What's in store in terms of fiscal responsibility? Are you going to be able to hold the line or are my taxes, when I move to your place, going to go up because of the downloading? How do you see it?

Mr Franklin: We're dealing, then, with a different issue. That's really a question related to —

Mr Pouliot: Oh, we'll get to that, your worship. I've got another two minutes.

Mr Franklin: We're doing an analysis of downloading and we have some concerns, but the 10 area mayors here have a suggestion for restructuring Ottawa-Carleton which will provide substantial savings to help offset the downloading. It's called the greater Ottawa model — would you like to hear about it?

Mr Grandmaitre: We'll give you 30 minutes, Ben.

Mr Franklin: — whereby regional government is eliminated. Seriously, we realize there are tremendous changes and we also feel there are going to be some amendments; at least that's the indication. Yes, we do have some concerns about some of the changes that are taking place and not knowing the exact numbers. What we are prepared to do is to work with everyone in a logical way so we can maintain property taxes. We're not going to just sit back in a corner and cry and complain. We're going to try to take a leadership role and define solutions.

Mr Pouliot: Mayor Franklin, you're no doubt very much aware of the marketplace, of the price of housing. Is the price of housing market-driven, or will what is being proposed here have a significant change in the price of housing? How will the surrounding services like the fascinating world of sewer and water and road components, all that connects the services we get in a modern municipality, impact somebody coming in — Mr and Mrs Canada with 1.8 children — and building a new place, a future? How will they be impacted?

Mr Franklin: I don't believe these changes will actually reduce the price of housing. It will add costs to the local area. Say you select the debt option. Then you can probably accommodate this without any immediate foreseeable change, but it will increase property taxes. I can't see it lowering the actual price of a house. The market is a strong factor. Frankly, the quality of a community is a very important factor in what a house sells for. If you're going to have substandard areas, you're not going to have very desirable areas for people to go. To me it's not going to make that much of a difference. I know the building industry may tell you differently.

Mr Pouliot: They're next.

Mr Franklin: However, I don't think it will have much of an impact. I think the market forces are the main factor.

Mr Pouliot: But someone has to pocket the money. Surely you're not imputing motive and saying that if nobody benefits and there's a vacuum here, their friends — let's go this far; it's obvious — will pocket the

money? If you take a beating as a municipality and the consumer doesn't get the benefit, who gets it?

The Chair: Excuse me. We're going to move now to a question from the government caucus.

Mr Franklin: I've not read their financial statements and I don't own stocks. Some of them will tell you they're already losing money.

Mr Pouliot: We all have immunity.

Mr Tony Clement (Brampton South): Thank you for being here this morning. A couple of questions. First, some of the figures we have been provided with indicate that Nepean went from development charges of \$2,200 in 1985 up to — I'm presuming it's a peak — \$20,180, which included, I see, an EDC of \$1,600 or so, but that number was from 1995. You went from \$2,200 to around \$20,000 or so per house.

Mr Franklin: That included the region.

Mr Clement: I appreciate that, but the fact of the matter is for a new home buyer in Nepean, \$20,000 of that purchase price was in the form — that's the average, I guess; my colleague reminds me — of a development charge. That's got to have an impact on growth.

We were talking about growth and jobs in our communities. As one of the deputants said yesterday, a lot of those people buying the new homes are our sons and daughters who are actually from our community, who have grown up in our community and are now moving on to their first house. I know you say it's the developers, but really the developers are just going to be passing along this cost to the new home buyer. Those are our sons and daughters who are paying that \$20,000 development charge. Is there any stop to this you can see? Is there any way we can balance the interests of the municipality with the new home buyer who's trying to buy her first house?

Mr Franklin: I think we've done that through meaningful discussion with the development industry. There were no objections to our bylaw. We did lower the cost. But keep in mind that the standards are changing dramatically. I mentioned not only stormwater holding tanks but actual treatment of storm water. We're talking about megaprojects here that have to be picked up. In 1985 they weren't a part of the scenario. More and more, I'm sure, across Ontario requirements will be included for very expensive infrastructure. You look at that one component alone and somebody has to pay for it. Based on our philosophy that growth pays for growth, that's included in the development charge bylaw.

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Mr Clement: You've got me on the hard services. In fact the minister announced yesterday he'd like to go to 100% on most of the hard services. On the soft services — this is the second part of the question — when you're building a new arena because of the increased growth in your community, let's face it, that arena's open to everybody. Is it not fair to say that 70% of that charge is faced by the new home buyer, but about 30% of that usage is going to be from the existing community and should be borne by the existing community? Is it terribly unfair to say that?

Mr Franklin: It's not unfair to say there should be a split, but that split shouldn't be an arbitrary number. It

might be 50-50, depending upon the arena requirements you already have. It might be 75-25. I think what you have to do is have the appropriate split in your development charge bylaw, which we have, based on an analysis of usage of various services, be they libraries, arenas or what have you, worked out with the development industry so they understand our numbers.

Frankly, in this whole exercise of creating development charges I have found the development industry to be very fair, to make positive suggestions. We've tried to change where we felt they were right. I think we've had very positive, healthy dialogue. If you had one arena in a big area, then obviously it's probably going to be 80% used by the existing community. Then you'd have an 80% factor. You can't just do it, I don't believe, arbitrarily. You put numbers in, you do cost breakdowns, and you leave it there for challenge. Let me assure you that if you're wrong, the development industry will point it out to you, because the way it stands, you go to the municipal board and you have to defend your numbers. That's what we're saying. An arbitrary thing is not the right way to go.

Mr Grandmaitre: What is Nepean's projected housing growth for the next two or three years?

Mr Franklin: As you know, there's been a decline in the housing area. It is starting to rebound. With a lot of the downsizing, particularly in higher management jobs in the Ottawa-Carleton region, of course the market in larger homes is very soft. You eliminate some executives and the market goes soft. We find it picking up. By the way, our philosophy for the past 25 years has always been to provide communities where there's a full variety of housing types to accommodate all. Indeed, we were very active when the province had the program of becoming involved in requesting our quotas for non-profit housing and so forth. At our new city hall we have development almost across the street which is public housing. But the market basically is not your higher-priced homes. This year it's picking up. We're hoping, for example, for 600 building permits in the area of new housing units, say 612.

Mr Grandmaitre: I know it's difficult to project these things. Let's use, as an example, 1995. If you were faced with the same growth in 1997-98, how much money would Nepean lose as far as development charges are concerned?

Mr Franklin: I'm going to ask the finance person to deal with that. It's not always a case of actual outright losing because you'll get it back eventually. The problem is that when you have services in the ground, the services in the ground are from the development charges. When you start a major stormwater treatment facility, you can't put in a quarter of it or half of it; you have to front-end load it. You don't have all your money in from the development charges and yet it's up and running, and you won't have it all in until that area is complete. What we've been doing is front-end loading it from another reserve account or other reserves we may have, and then you lose the interest on that. So there is a cost.

Mr Grandmaitre: That's what I'm trying to get at. If you don't get it from the developers, the municipality will have to put up those dollars to provide the services.

Mr Lloyd Russell: If we're looking at 600 housing starts, we calculated the changes in the legislation to be in the neighbourhood of \$1,400 to \$1,500 per single-family dwelling. On 600 units, you'd be looking at about \$900,000 of revenue that was lost.

Mr Franklin: Say \$1 million, rounded off.

Mr Grandmaitre: I'm not going to ask you if you can afford this, because I know you can afford this; I know your reserve. Talking about reserves, how much money would you have in that bank account for development fees?

Mr Russell: The development charge?

Mr Grandmaitre: Yes.

Mr Russell: Just a second; I have it here.

Mr Grandmaitre: Approximately; I'm not an auditor.

Mr Russell: At year-end 1996, there was about \$500,000 or \$600,000 in the development charge reserve fund. We actually project that in our capital budget to be in a negative position throughout four of the five years because there are servicing requirements we have to build in advance of collecting the moneys.

Mr Grandmaitre: I have one last question.

The Chair: Your time has expired.

Your worship, Mr Russell, on behalf of the committee, I thank you very much for taking the time to come before us this morning. We appreciate your best advice.

Mrs Marland: Have I got any time to ask a question? Would you ask them if they're prepared to have their books open on the subject of development charges? Perhaps you could ask that question for me, if they'd be willing to have their books open and identify the amounts of money collected and what it was spent on.

Mr Grandmaitre: It is public.

Mrs Marland: Yes, but not all municipalities have it.

Mr Grandmaitre: The auditor goes through it once a year when there's a municipal audit.

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OTTAWA-CARLETON HOME BUILDERS' ASSOCIATION

The Chair: Good morning. You're the representatives from the Ottawa-Carleton Home Builders' Association. Would you please introduce yourselves for Hansard.

Ms Caroline Castrucci: My name is Caroline Castrucci, and I am the immediate past president of the Ottawa-Carleton Home Builders' Association. With me today is Michael Noonan, who is also a member of the board of directors of our association.

The OCHBA is the voice of the residential construction industry in Ottawa-Carleton. Our 300 members collectively are responsible for about 97% of the housing that is annually produced in our region.

Our association appreciates the opportunity it has been provided to address this committee. We are extremely pleased with the many efforts made by the government to date to assist our industry. We have steadfastly stated that we are not looking for handouts but are seeking a balance in terms of the obligations imposed upon our members when it comes time to develop land and construct new homes.

The legislation we are discussing today represents another step down the path of the restoration of an all-regulatory environment which is fair and equal to all participants.

Our association does have some observations and comments which we would like to share with the committee. We understand that the committee is conducting hearings throughout the province and will receive deputations from other local home builders' associations and the Ontario Home Builders' Association. As such, it is not our purpose here today to address, on a clause-by-clause basis, the proposed legislation. Rather we intend to provide the committee a sense of the Ottawa-Carleton housing environment, the impact of the development charges on the local home-building industry and specific comments with respect to aspects of the proposed legislation.

Mr Michael Noonan: The Ottawa-Carleton Home Builders' Association, for the record, supports the direction the government is taking in advancing Bill 98. This piece of legislation is an important reform, impacting an industry which is vital to the economy of the province. The modifications which were announced this morning have altered somewhat some of the comments contained in the paper we have distributed, and we will address them at the appropriate time during the course of our presentation.

We feel that the legislation is vital and well-meaning for three reasons. First of all, the legislation restores accountability to municipalities by requiring specific contributions to infrastructure. I recognize that the balance, the 70% and 90% rule, has been changed, and we'll address that shortly. The legislation also defines very clearly those services which can be included within a development charge. Third, the legislation clarifies the rules of the game with respect to such things as level of service and growth-related expenditures.

However, merely reforming the Development Charges Act is not enough, and we are encouraged by the efforts of the government to undertake a comprehensive review of all legislative elements affecting the construction of new homes and housing. The efforts of the government must stretch to changing the building code, property tax reform and the streamlining of the currently burdensome regulatory environment.

The proposed legislation restores a sense of fairness and balance to the financing of the cost of development. It is not 100% to our liking, but the act does reverse an extremely harmful trend which emerged in the early part of the 1980s and which was accelerated by the enactment of the Development Charges Act.

In Ottawa-Carleton, as has been discussed in the questions of the government, our industry had the unenviable distinction of having to deal with the highest development charges in the province of Ontario. This resulted from previous legislation not providing any definition or guidance as to what was leviable and what was not. Many municipalities established development charges based upon extremely ambitious, expensive and unsustainable capital works programs. Our industry was looked upon by many as the proverbial goose that laid

the golden egg, and like the fairy tale we came very close to being slain to get all our eggs.

For example, how many multipurpose sportsplexes does a municipality of 100,000 need? Are community centres justified in every single community and are they financially justifiable? Are extraregional services, those that serve the hinterland, the rural areas or other municipalities, or other provinces for that matter, leviable? What about performing arts theatres, art galleries or equestrian parks? Are they leviable? How could a development charge calculation include a technology which was specifically prohibited by a previous provincial government?

Does a municipality need two city halls? I think these are all important questions, questions which we as an association asked when we were being presented with first-generation development charges. The unfortunate thing we experienced was that our questions were largely ignored and development charges in many cases were enacted.

Development charges at that time were established not based upon what was reasonable and affordable but on what the market could bear and what other municipalities in the region were charging. When the first generation of development charges was established, the housing industry was much stronger than it has been of late. Charges were gradually phased into existence, which was appreciated, but the unfortunate thing was that the full amount of the charge came into force and effect precisely at the time when the housing market was taking a turn for the worse.

In recent years, the housing market in Ottawa-Carleton has suffered considerably. Production volumes are down by over 50% from the time when development charges were first introduced. Housing affordability has increased — prices have dropped by 15% to 20% — yet the cost of construction, both hard and soft services, continues to escalate. The toughness of the market is demonstrated quite clearly by the number of long-standing builders in Ottawa-Carleton who have been forced out of business. Over the past two years our region has lost a number of builders, who accounted for roughly 20% of the market's production in 1994. Long-standing companies like MacDonald Homes, Wedgewood Construction and Woodlea Homes have disappeared.

Were development charges exclusively to blame for the conditions in the marketplace? No, but they did exercise a disproportionate influence.

Recognizing market conditions and the cost implications of capital works programs that formed the basis of local development charges, many municipalities, to their credit, have reassessed their charges in advance of the legislation. For example, the city of Nepean has reduced its charge considerably, the city of Gloucester has reduced its charge by 64%, and the city of Ottawa has completely eliminated development charges throughout its jurisdiction. We are of the opinion that changes of this sort clearly demonstrate the inexorable connection between development charges and the performance of the market. However, what these reductions also reveal is the excesses that were built into the development charges when they were first established. We believe that similar trends can be witnessed across the province. We feel the

new Development Charges Act will curb many of these abuses.

Before commenting on three particular areas of interest, we would like to make one specific request to the committee. The Development Charges Act must reflect the concerns and the realities of the entire province. The debate that is currently raging in the greater Toronto area with area municipalities is alarming to us in Ottawa-Carleton in that there is always the risk a made-for-Toronto solution will be imposed upon the rest of the province. The committee should appreciate the very real differences between the Toronto housing market and the one in Ottawa-Carleton. In its recommendations to the government, the committee should endeavour to strike a legislative balance applicable to all corners of the province.

We disagree with or depart somewhat from the last deputant. We believe that legislation is needed and some fairly clear rules of the game needed to be defined and we are encouraged by the legislation which is being proposed as well as the regulations which have been distributed this morning.

In the proposed legislation it states that level of service financed by development charges should be limited to a 10-year historical average. This is a marked improvement over the current act, which allows development charges to be based on the highest level of service over the preceding 10 years. However, the wording of the legislation will ring extremely hollow unless there is an extremely clear set of regulations which detail the manner in which the level of service is defined.

We are uncomfortable with such an important element in the legislation being ill-defined and left to the municipalities to implement. The province should strive for a degree of consistency in terms of the methodology employed. The methodology used in Nepean should be identical to the methodology used in Windsor or in Thunder Bay.

For example, the regulations should be clear as to how you measure level of service for the items for which development charges can be imposed, how growth and non-growth contributions are calculated, how intra- and extramunicipal costs are to be apportioned, and how municipalities should deal with instances where capital projects are paid for in part by development charges and in part by property taxes so that new home owners are not paying twice for the same service.

Second, the proposed legislation defines growth-related in terms of benefit provided, but leaves the determination of benefit up to interpretation. Experience has shown that many development charges include services that benefit a much larger area. We would ask that the regulations address in detail and with considerable precision the way in which growth-related should be determined.

Third, the proposed legislation imposes a degree of accountability on local government. The changes which were announced this morning with respect to the 100% on hard services somewhat change our comments, but we still believe it's a vital piece of the legislation that there is a portion attributed to the municipalities.

Many of us know how easy it is to spend someone else's money, and under the current act, particularly

where services are presently 100% leviable, this was just the case. Since the consideration of first-generation development charges, we have raised a host of concerns about the breadth of local development charges, claiming that municipal wish lists were gold-plated. We are sure this is a criticism that you've heard previously. The requirement to have a specific municipal contribution we believe will introduce on the part of local officials the need to justify to the elected representatives and to the community at large the need for a particular service. I think it's a self-questioning which previously hasn't existed and which now will emerge.

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However, at the same time, the proposed legislation weakens the accountability. From my reading of the legislation, the act proposes that municipalities will be permitted to establish only a 70% and a 90% contribution reserve fund. We do not agree. Instead, we feel that separate reserve funds for each servicing category should be maintained and mandated. This guarantees accounting transparency and permits those contributing to reserve funds an appreciation as to where the funds stand in relationship to one another. Such a system would also allow one to determine whether a development charge is overcollecting in a service area or undercollecting in others, a good test as to the appropriateness of development charges.

The act probably could further enhance accountability by imposing more rigorous auditing functions. Today, development charges are largely based upon a work program, the cost of which has been estimated by municipal staff. Our experience has shown that cost estimates prepared by municipalities for road and sewer works are often substantially higher than what the industry is paying for identical projects. Yet when we question the quantum of cost estimates, all we are told is that that is the price municipalities have to pay. I think it raises real questions as to whether there are excesses that could be eliminated by greater cooperation between the industry and the municipalities. The act should provide for a more streamlined complaint procedure in instances such as these.

Equally, the act is silent on how surpluses in reserve funds attributed to a specific capital cost item are to be handled. For example, if a development charge is based on spending \$5 million for a particular work and only \$4.2 million gets spent, where does the additional \$800,000 go? Should it go back to the people who are paying the development charges, i.e. the homeowners?

Finally, we would be remiss if we did not comment on the failure of the legislation to deal with the provision of educational facilities. Our association and the Ontario Home Builders' Association have consistently taken the position that development charges should not be used to fund the provision of schools and related facilities. Rather, the provision of these facilities should be financed from general revenues. The recent decision of the province to remove education from property taxes supports this position. The issue of educational development charges is important and must be addressed over the short term.

Thank you for your interest. We'd be happy to answer any questions the committee may have.

Mr Ernie Hardeman (Oxford): Thank you very much for the presentation. First of all, I think you were both present for the previous presentation from the mayor of Nepean. He brought forward the suggestion or he said that the development charges had been reviewed in Nepean and had actually been lowered in recent months in consultation with the industry, and all parties had agreed that should be done.

First of all, I just wondered if you could help me out as to why that process took place. Why did we decide in the past year to have the discussions and lower development charges in the city of Nepean?

Mr Noonan: I think you can probably point to two or three instances. Number one was the fact that the original development charges in many municipalities in this region were reaching the five years, and notwithstanding the decision in the Development Charges Act to allow for a furthering of the charge, I think there were some decisions made by the city of Nepean and the city of Gloucester that the time was right to review the charge.

Secondly, I think there was a recognition on behalf of the elected representatives in this region that there were some fundamental problems with respect to the industry and that one of the reasons could be attributed to development charges and there was a necessity to look at the cost of development charges as it related to the new housing business. This region has been hurt badly by a number of factors and I think, to their credit, the municipalities recognized that the industry was important to the local economy and there was a necessity to seriously look at it.

Further, there is a good relationship between our association and the municipalities, and the timing was right in so far as we had made some suggestions and the municipalities picked up on our suggestions and decided to move them forward.

Mr Hardeman: Can I go on, then, on that? If the development charges were lowered, was it the opinion of all involved that too many services were included, that services should be built at a lower level and a lower cost, or was the city picking up a percentage of development charges under the new regime?

Mr Noonan: I think there was a really serious look at the capital works budget, looking at it in the context of a fixed time line as opposed to stretching it out to build out. I think there was a reduction in terms of the size of the capital works budget as well as the timing. There were some different financing options brought forward which allowed for the reduction.

Mr Hardeman: So is it reasonable to say, then — I don't want to put words in your mouth — that the expectations in the former development charges were set higher than they needed to be?

Mr Noonan: That's our position; that's correct.

Mr Hardeman: Having said that, I just heard from the treasurer that there was not a lot of money in the reserves. What happened to the money that has been supposedly overcharged for a number of years?

Mr Noonan: The money that was in the reserves has been reinvested in the developing communities and put to the purposes which a lot of the money was collected for.

Mrs Marland: Mr Noonan, I think Mayor Franklin said that the development charges had not been appealed by the development industry in the city of Nepean. If the development industry wasn't happy with the charges, would you not have appealed them?

Mr Noonan: We have always said that if we are not satisfied with the quantum of any charge, be it educational, regional or local, we would pursue our rights to the Ontario Municipal Board. In fact, we have appeals outstanding with the Ontario Municipal Board with respect to all educational development charges within the region of Ottawa-Carleton.

Mrs Marland: Were you happy with development charges before the addition of the levy for new school construction?

Mr Noonan: Sorry. Were we happy with —

Mrs Marland: Did Nepean have development charges prior to 1989?

Mr Noonan: On a very small level, yes. I think the numbers which were reflected earlier are quite accurate.

Mrs Marland: For some of the municipalities that have difficulty with them, the straw that broke the camel's back seemed to be adding the cost of new school construction to them. That's why I was asking if you were happy with them prior to the addition of the cost of new schools going on to them.

Mr Noonan: In looking at local development charges separate and distinct from the educational development charges, I think there was a marked move between the charges which existed in the 1980s to the charges which existed following the enactment of the first Development Charges Act. What we saw was a dramatic increase. That caused us some serious concern, that a development charge in some municipalities jumped from \$2,000 to \$10,000. We felt it was unreasonable, unjustified and unsustainable. However, there was a softening by the phasing policy and the five-year provision. We felt we would see how it was going.

We're our own worst enemies as well, in the sense that at the end of the 1980s the market was still heading up and we said: "It's a cost of doing business. Rather than putting aside our tools, we'll accept them and get on with the business of the day." We didn't like it, but in our own self-interest we decided to move forward. Recessions and slownesses allow you to sit back and think about things. I think it was one of the reasons why throughout much of the 1990s there has been active discussion between the industry and the municipalities as to the size and the breadth of the development charges.

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Mr Mario Sergio (Yorkview): Mr Noonan, I know you're speaking for the home building industry, but if you were the mayor of Nepean and you were charged with the responsibility of providing a number of services — the building industry is there for profit, as running a municipality is to provide services.

The bill as it is now presented does not allow to use development charges for hospitals, schools, parkland acquisition, recreation facilities, police, fire. If you were a municipal politician and you were supposed to provide those facilities, would you like to have the flexibility to use development charges and other fees, building permit

fees and realty taxes, to provide those facilities, and should those facilities go hand in hand with new development or should they be provided if and when, according to Bill 98?

Mr Noonan: I'll answer your question as it was posed: if I were the mayor of Nepean. The answer is, quite rightly, that I'd love to take advantage of whatever tools I could in order to gain the necessary revenues to provide the services which my existing residents and future residents would desire me to as an elected representative in the municipality. I think your question was somewhat flawed in so far as saying that the proposed legislation doesn't permit the levying for police and fire; quite clearly it does.

Mr Sergio: It does?

Mr Noonan: It does. In terms of parkland acquisition, the Planning Act is quite clear —

Mr Sergio: Read clause 2(4)3 and see what it says.

Mr Noonan: I'm getting to that. In terms of parkland acquisition, there is a means under the Planning Act to require the conveyance of parkland in the appropriate amount.

In terms of health care, I think there's enough confusion in the health care environment right now not to add to it by the further levying of health care on to the backs of development.

Mr Sergio: Read the clause in the bill. Should those services go before new development, or should they be provided after? Because what this bill does is it says with the exception of roads, sewers and water, nothing else should be provided before.

Mr Noonan: I agree with that. That's right. The development industry and the housing industry is such that I could tell you what demand is today but I could not tell you what demand is in four or five years. There's no sense in providing tremendous overcapacity in the services that are out there in the community, only to have them go dark for a reasonable period of time and also to be unsustainable by the costs on the taxpayers.

Mr Sergio: So fire station, ambulance, police stations — are you calling those overservices?

Mr Noonan: There is existing capacity in the infrastructure in many municipalities which can accommodate new growth. There certainly is a point where there is a need for additional services. Those are reached once development reaches a certain threshold, and there will be money contributed up to there to allow for the new facilities to be built.

Mr Sergio: Are you saying that some of those services, such as police protection, fire protection and recreation facilities, should be provided four, five, six, 10 years after a new subdivision has been built?

Mr Noonan: Our view is that the services should be provided when there is the appropriate demand in terms of the new communities which are being built there. So for a new community which is starting today which has 20 people in there, there shouldn't be facilities built in advance. They could be served from the existing infrastructure.

You have to understand that growth within Ottawa-Carleton is very gradual in comparison to maybe growth in the GTA. There's a need to recognize that and that

services are brought on in a phased manner rather than having them there right from day one. In some master plan communities in Toronto, there's the need immediately for that. If you're looking at a Springdale community, where they're looking at 4,000 acres, yes, you're probably saying there's a need for the infrastructure to be there from day one because there's a fairly good possibility that it's going to be phenomenal growth within the first five years.

Mr Sergio: So shouldn't the mayor of Springdale or Brampton-Bramalea have the flexibility to say, "I want those facilities to be provided now instead of five years down the road"? Isn't that what we are saying?

Mr Noonan: Provided that the list is appropriate and is reasonable. That's all we're asking for.

Mr Sergio: So a fire station, a new police station, a cultural centre, if you will, or a nice park for Springdale should be provided at the same time as you provide the roads, sewers and water, right?

Mr Noonan: I'm saying in certain cases yes, but in other cases no.

Mr Sergio: In other words, it's not totally no or yes.

Mr Pouliot: Mr Noonan, to me you're truly an amazing person.

Mr Noonan: I appreciate that. Thank you.

Mr Pouliot: You carry your heart on your sleeve. You seem to have an opinion on just about any subject matter, whether we're talking about the health levy — you put yourself in the shoes of municipal councillors. Location, location, location: A location in your kind of infrastructure does not yield a good price.

There's one thing that struck me in your presentation. It was a nuance, and I need your help. Mr Noonan, you mentioned en passant, matter of factly, that when government went to tenders, well, they do their own due diligence and they're great at that, but you seem to hint that it costs more to build for a government, for a municipal or provincial or federal government. Do you think that is so?

Mr Noonan: That's the statement I made, yes.

Mr Pouliot: You see, they go to tenders. They spell out the specs and they receive the tenders from people like yourself. What you're saying is that if you build for the government, the people you represent will charge more since they are building for the government. What assurance do I have, as a consumer, that if you're building me a house you will not pocket the difference? You seem to make a good case when it comes to government building by charging more, but myself as a consumer, I have to turn the page and listen to the same credibility. Is this consistent or is this reasonable?

Mr Noonan: In terms of what we charge and what we don't charge, I think we're in the market every day and we have to deal with the consumers who walk into our sales offices and decide to plunk down their hard-earned money to buy that first house or that second house or that move-down house. We price to the marketplace. The very real realities are that we are in a very competitive industry and a very competitive market. To think that if there is an elimination of the development charges today or — let's just talk parenthetically. If there's \$10,000 eliminated from the development charges today, are we

going to drop the prices by \$10,000? Are we going to keep the \$10,000?

It really depends upon what the market allows us to do. In some cases there will be a sharing; in other cases there will be a total rebate, a total reduction of the price. It's a business. We are responding to what our consumers are saying and what the public is saying to us. In that sense we're no different from you: You are acting on behalf of your constituents; we're acting on behalf of our constituents. Our constituents are in our sales offices every day.

Mr Pouliot: So out of the \$10,000, I get the impression — I must translate everything and it takes time, so please bear with me — that my chances of getting away with 100% of the savings are remote, because I see two hands here: a hand that gives and one that takes. Is this what you're saying? Go back to the original question. You sure as heck don't pass it along when it's a government entity, and you should, because you get a guarantee of payment, even if it takes a little time. Governments have broad shoulders and they can always pass the cost along to the consumer, so they should drive a bargain. No, they're paying more.

Now I must believe that you will pay — you've just said in nuance that maybe you will pass on some of the savings. It depends on market conditions, interest rates; it depends on what Greenspan is going to do today and what Thiessen will do two months after. All these things are a factor.

Mr Noonan: You've captured it very nicely. It's a very dynamic environment.

Laughter.

The Chair: Thank you very much. We appreciate your taking the time to come before the committee today.

I would like to mention to those who are here in attendance that yesterday's hearings were very serious. It depends very much on the committee members who are here during the day. I can see that quite clearly.

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ALEX MUNTER

The Chair: I call Alex Munter. Mr Munter, welcome.

Mr Alex Munter: Welcome to the national capital region. I'm glad to see you're having such a good time here. We like to think that's what happens when people come to Ottawa-Carleton.

I'm here speaking on behalf of myself. My name is Alex Munter. I'm a member of regional council in Ottawa-Carleton and I represent the city of Kanata on regional council. Our council has yet to take a position on this bill. We'll be discussing it in committee next week and at council the following week, but it will be very similar to what you have before you in terms of my presentation.

I share the concern that many municipal politicians across Ontario have expressed about the negative impact of this piece of legislation on municipal finances and the ability of local governments to control our finances. But I also bring the perspective of somebody who grew up in a suburban community and represents a quickly growing suburban community where development charges are an

absolutely key part of being able to build the community we have.

I agree and share the view that our goal must be to reduce development charges so that housing is more affordable and commercial-industrial development is encouraged. I think the best way to do that is to have better land use policies, to focus development in areas where significant investment in infrastructure has already taken place and to optimize that investment.

We are moving in that direction here in Ottawa-Carleton. We have a draft regional official plan that has been tabled and that is currently undergoing significant public consultation, and that draft official plan says that new development will take place in those areas where there already is a lot of infrastructure in terms of suburban communities — places like Kanata in the west, Orleans in the east — and also, within the greenbelt in Ottawa, in Nepean, Gloucester, Vanier, the communities within the greenbelt.

By not extending the urban boundaries ever outward and starting new communities, we anticipate that for the region alone we're talking about a savings of \$2 billion over the life of the plan and there will be other savings for Queen's Park in terms of the funding of education for school boards, if they're still involved, and of course for the lower-tier municipalities, the cities and townships.

That's the way, in terms of controlling our expenditures and restricting our expectations, we will be able to bring down development charges and have a positive effect on the affordability of housing.

People move to Kanata because of its quality of life, because of green space and parks and activities for kids. It has a small-town feel, with city services; in fact the development industry markets that. The development industry doesn't talk about the width of the sewer pipe. They talk about the parks, the green space, the activities and the schools. They talk about the kind of community it is.

I am very concerned that the determination that a whole range of those very essential parts of what constitutes our community will be entirely prohibited from development charges or subject to the 70% limitation for development charges is clearly going to hit those communities hardest that have the greatest need for them; that is, places like Kanata.

I'm concerned that things like community centres and parks and libraries seem to be considered frills in the legislation. They are not frills. They are part of the basic fabric of a community. Publicly owned community space is vital to the health of a community. Indeed, in our community in Kanata one of the issues we struggle with is young people, teenagers, youth, as to what to do with them and for them. One of the concerns is that they have nowhere to go except for privately owned spaces like malls, where they're not welcome. The division between hard and soft services is a phoney division and one that should be deleted from the bill.

Requiring that funds for new development be borne partly or entirely by existing taxpayers at the same time that you will be putting considerable pressure on the existing taxpayers by downloading so many provincial services to the local property tax base means a choice of

higher property taxes, less or no services, or privately run facilities that are not open to all. A fourth option would be borrowing; that would be another option that would be open to municipalities. I think you can see why none of those particular options would be appetizing for members of local councils.

The legislation ignores the recommendations of the Crombie panel and diminishes the ability of local councils to decide for themselves the kind of community they want to build, and it runs directly counter to what this government has said its intention is, which is to give municipalities and local councils the ability and the tools to be able to finance their operations and to be able to build the kind of community they want to.

It is also, incidentally, unfair to residents in existing areas who did bear the entire cost of new infrastructure in their own neighbourhood, or almost all of it, to then have to pay again for newer neighbours down the street.

I would urge the committee to amend the bill so that it is not so rigidly inflexible in limiting municipalities' ability to run their own affairs.

A couple of specific points: I believe there should not be a mandatory copayment of property tax dollars to access development charge revenue. I also believe the bill should be permissive in terms of allowing area-specific development charges in different areas, depending on those different areas' different needs.

I'd also like to take a moment to talk about the health care piece of the legislation because that is of grave concern. We had our visit from the Health Services Restructuring Commission in this community about a month ago. As with everywhere else, they have closed hospital beds and closed facilities, but they've also given an indication that there will be a significant bill for the local community to pay to refit and restructure the health care system in terms of capital one-time costs. On the hospital side, the total capital bill is \$106 million, of which a third, a little over \$30 million, will have to be raised locally.

In addition to that, there will be new facilities. One of the areas in which Ottawa-Carleton lags way behind the rest of the province is long-term care. We have a big catch-up game, and the commission recognized that. We will have hundreds and hundreds — well, thousands; I guess that's what hundreds and hundreds add up to — of new long-term-care beds. The problem with long-term-care beds in this community and in many communities has not been the operating dollars. That's half the problem. Once you get the operating dollars, you need the capital money to kickstart the whole venture. You need to be able to build the building.

I'll give you an example. Villa Marconi got its allocation for long-term-care beds in this community in 1987. They open this year. It took them 10 years to put together the capital dollars. An absolutely indispensable part of that capital piece was regional development charges, a regional fund that went into the construction of that facility.

If we're going to build a whole lot of new nursing homes and a whole lot of new community health facilities, if we're going to have to refit hospitals and if we're going to accommodate the growth of aging population as

a result of all the other changes that are going on, cutting health care facilities out of the Development Charges Act will sabotage the entire effort to refit and restructure the health care system in our community.

I share the view of the Association of Municipalities of Ontario that this bill will "curtail council's ability to finance infrastructure services and hold the line on property tax increases," and I would respectfully ask your committee to change the bill. I'm happy to answer any questions.

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Mr Grandmaître: Thanks for your presentation, Alex. I was interested in your comment that with better land use, the regional government could save possibly up to \$2 billion. Do you think it was an error 27 years ago to create the city of Kanata?

Mr Munter: Absolutely not. In fact, the city of Kanata was created in 1978. The difference, of course —

Mr Grandmaître: In 1978, I should say.

Mr Munter: The difference was that it was a different time, a different time in terms of budgets. What we have done over the past 27 years is that we have made a very significant investment, we in Kanata but also folks all across this region, a very significant initial investment in infrastructure, in terms of regional government \$100 million alone in the past nine years. What the regional official plan proposes to do is to finish the job.

That initial investment, the skeleton of services, will allow for growth of up to 100,000 people; Kanata now has 50,000. What the regional official plan does is say, "Let's focus development in Kanata and in Orleans and in those communities where we've already begun to make that investment," instead of going to places like Leitrim, for example, where there are no services in the ground and start brand-new communities there. By doing that, by focusing on those suburban and urban communities where that investment in services has already been made, that's a saving for regional government alone of \$2 billion.

Mr Grandmaître: But what I'm trying to get at — we're talking about better land use, and when Ottawa-Carleton was created Kanata wasn't in place. When you talk about Kanata and you talk about Orleans, you're talking about east-west. OC Transpo is saying, "That's where all our cost has gone in the last 15 or 20 years," to provide better transportation and so on and so forth. And don't forget, in those days, back in 1973, the projected population was a million people for Ottawa-Carleton. We haven't reached this.

I want to go back to my original question. Do you think that we should have been better land users back in 1978 and said, "Let's not go to Orleans or create Kanata; let's build the inner core"? You've had great success in Kanata. I'm not challenging your successes, but I'm just wondering if it was the right move to create another city.

Mr Munter: Ben, I wasn't around in the 1960s when all those expansion decisions were made. You were, and I presume you were part of those debates. We should get together —

Mr Grandmaître: Do you want to strike this out?

Mr Munter: — and talk about that discussion. I grew up in Kanata, Kanata is my home town, and I have a tremendous emotional investment in Kanata. But there's

also, on the fiscal side, a tremendous financial investment that's been made. I think we need to build on that financial investment and focus development there and in those other places where that investment has already been made.

Mr Grandmaître: One last question, Alex: What is the difference between growth-related costs in Kanata versus growth-related costs in Nepean? What are the differences?

Mr Munter: It depends where. I don't have the figures off the top of my head, but there's a per-door cost from the regional perspective that — now I'm going from memory, so I won't vouch for these numbers, but it's in the neighbourhood of \$10,000 or \$11,000 a door for regional government and it's a couple of thousand dollars more per door for the Nepean south urban community.

Mr Grandmaître: Why?

Mr Munter: It's a function of what's there already. In Kanata's case a lot of the regional roads, a lot of the sewers, a lot of the services are already there; for the south urban community in Nepean they're not, or some of those services are not.

Mr Sergio: One of the previous speakers said that we should have blanket legislation for all the municipalities in Ontario. Do you believe that would serve municipalities better, or should municipalities have the flexibility to conduct their own affairs?

Mr Munter: Not only should we not have blanket legislation across Ontario, we should not have blanket legislation within a municipality. I think one of the things that kind of refers to the previous question, one of the realities is that different areas have different costs to develop. Even within Kanata, an area that's right on the transit way and that is serviced by sewer, that is serviced by regional roads, is much, much more cost-effective than at the very perimeter of Kanata land that has just been designated from rural to urban, where sewers will have to be built and roads will have to be built. In that particular case I believe there should be a differential development charge so that we can pass on the benefit to the homeowner who moves into that community where it is more cost-effective for the public purse to put the infrastructure in place for that development, and this piece of legislation does not permit us to do that.

Mr Sergio: If you receive an application at the local level from a developer saying, "I want to build on this particular piece of land, but I don't have enough land to provide you with the 5% park levy, but I'm willing to pay you so you can go and buy land somewhere else to provide parkland facilities for the community," do you think they should have that flexibility to say: "Okay. I'll take your money, development charges, because you don't have enough land. It's downtown. It's at the four corners. Therefore, we can't ask for two acres of land. The land just isn't there"? Do you think it's fair that the municipality charges development charges to provide a facility such as a park in the vicinity to go in and buy land?

Mr Munter: In our region it's not regional government that does that, but I'm aware that cities do, and I believe the cities should have the flexibility to be able to do that.

Mr John O'Toole (Durham East): Thank you very much, Alex. I gather there's another Alex from the Ottawa-Carleton region.

Mr Munter: My other brother Alex.

Mr O'Toole: Yes. It's good to see a young person so heavily involved in both the municipal level of politics and the broader view and coming forward. That being said, after listening for a day or so and reading through this material, it's really all about the level of service that the taxpayer can afford.

You've really taken some issue with the distinction between hard service and soft service. It could be argued that hard services — I'm running this by you here; you seem to be very well informed — that there needs to be addressment of retention ponds and those other kinds of things that are relatively new in the planning process, but when it comes to soft services, to look ahead, five, 10, perhaps even 20 years in the planning window, it may be rather risky to assume certain service levels.

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I'm asking you, first, do you believe that the enjoyment of our communities in some ways should reflect the state of the economy? The economy can be very high and very aggressive and that can vary across the province. We may have a lot of tennis courts, squash courts and floodlit T-ball stadiums, depending on how rich we are, and it may get very pathetic in some areas when the federal government downsizes by 30,000 employees. It may have a fair impact on Kanata. Once you put these in place, do you think that the level of soft services is a variable?

Mr Munter: Yes, and I think that the current system takes account of that.

Mr O'Toole: I don't agree with you.

Mr Munter: My experience of setting development charges, both at the city and at the region, is that it's a tortuous process. Every penny is defended and at the end of the day, anybody — any citizen, any developer, anybody — can go to the municipal board and make the case that they made a mistake.

Mr O'Toole: I just want to put one thing to you. The greatest burden for soft services is not the capital. A fund-raiser will get that out of the way. It's the operational, which is huge and progressively increasing every year because of various collective agreements and what have you, and the replacement of small nets and various things. Pools never make money and in fact they're a huge insurance liability.

Are we not saddling the future, with these soft service decisions, with inordinately expensive, and I'm not sure sustainable, cost? I've been through it. I was a local regional councillor, all that stuff, right from the beginning.

Mr Munter: I guess I would argue, first of all, with the premise that we have Cadillac services.

Mr O'Toole: That's right. We do.

Mr Munter: Well, you may; we don't. Certainly in the newer communities in Kanata there is a lot of concern about the complete absence of some services. But I've always been a bit surprised by the development industry's approach to this because if there were no parks and there were no schools and there were no community centres

and there were no green spaces, and there were none of these soft services that seem so expendable, they wouldn't be able to sell their homes —

Mr O'Toole: And they would build them like they used to. That's what they used to do, if you've been in municipal politics for a long time.

Mr Hardeman: Thank you very much, Councillor, for your presentation. I just quickly want to go to a couple of areas. One was the development charges for hospitals and the exclusion of hospitals. First of all, I want to point out that it's only the hospital as defined by the hospital act that is eliminated, not the long-term-care facilities that municipalities are presently somewhat responsible for.

But in your presentation you speak of the Hospital Services Restructuring Commission coming into Ottawa-Carleton and making some recommendations that require expending considerable sums of money to change hospital care in the region. Do you think it's appropriate that new homeowners should pay for that as opposed to the general tax base? Obviously, the new homeowner didn't create the need for the change in health care. They only created the need for more health care. The majority of the recommendations are based on changing facilities, not expanding facilities.

Mr Munter: It would depend on what it was. The development charges bylaw goes through a process where any project that's in it needs to be justified on exactly that basis. For example, the transfer of some services from one hospital in the central part of our region out to the western part of our region, the community hospital, which is being proposed is obstetrics and gynaecology and that is reflecting the growth of a young community. If the growth of that community is creating the demand for that service, then that would be appropriate.

I am just concerned that we are boxing ourselves into a corner in terms of the magnitude of what we will need to come up with locally. Fund-raising will accomplish part of that, but if we cut off the ability to use regional development charges for those health care services, we are really boxing ourselves in.

The Chair: Thank you. I must interject at this point.

Mr Hardeman: That's it?

The Chair: Sorry.

Mr Munter: I appreciate your taking the time. On behalf of the committee, we thank you for bringing your views to us this morning.

ALEX CULLEN

The Chair: I'd like to welcome, please, Mr Cullen from the regional municipality of Ottawa-Carleton.

Mr Alex Cullen: Thank you, Madam Chair. I am the other Alex and there is a fair amount of — I shouldn't say "confusion," but from time to time — our offices are opposite each other and we do sometimes find ourselves in the position of taking each other's phone calls, which in politics can be very amusing, as I'm sure you can imagine.

Good morning to you all. As has been mentioned, my name is Alex Cullen, I am a member of regional council here in Ottawa-Carleton and a member of its planning and environment committee and have been a member for

the past five years. I am speaking here on my own behalf concerning the proposals contained in Bill 98.

Bill 98 deals with an important tool, development charges, that affects not only housing costs and municipal services, plus the taxes needed to support them, but clearly also land use. Therefore, I thought it would be useful, before reviewing the proposed legislation on how the legislation affects land use, to recall the principles regarding land use that this government has enunciated.

On May 22, 1996, the Lieutenant Governor in Council issued, under the authority of the Planning Act, a provincial policy statement governing land use planning. This is the policy statement here. Specifically, under section 2, "Principles," the government stated:

"Ontario's long-term economic prosperity, environmental health and social wellbeing depend on:

"1. Managing change and promoting efficient, cost-effective development and land use patterns which stimulate economic growth and protect the environment and public health."

Further on in the policy statement, under "Policies," the government stated:

"It is the policy of the province of Ontario that:

"1.1.1 ...cost-effective development patterns will be promoted.

"1.1.2 Land requirements and land use patterns will be based on...

"b. densities which (1) efficiently use land, resources, infrastructure and public service facilities; (2) avoid the need for unnecessary and/or uneconomical expansion of infrastructure; (3) support the use of public transit in areas where it exists or is to be developed;"

"d. development standards which are cost-effective and which will minimize land consumption and reduce servicing costs; and

"e. providing opportunities for redevelopment, intensification and revitalization in areas that have sufficient existing or planned infrastructure."

It is a short step in logic and in economic theory — and I should mention in parentheses that I am a professional economist — to the position that the Legislature ought to adopt that development charges should be fully cost-recoverable for the services to be provided to new residential communities. These services include roads, transit, water, sewers, sidewalks, lighting, police, fire protection, schools, parks, hospitals, community centres, libraries and recreational facilities. These are what we consider today to be the basic building blocks of any healthy community.

If we are to have efficient, cost-effective land use, then we cannot allow public subsidies to cloud or undermine efficiency. With full infrastructure pricing, the market will be able to match consumer demand with housing supply, including the community services associated with that housing — because, as has been mentioned earlier, you do not buy a house strictly in isolation — at a price that will clear the market. It is through both competition and price that innovation occurs. While the housing industry may seek public subsidies to lower costs and therefore sell more products, one has to ask: Products of what?

We can no longer afford urban sprawl. Municipalities have already lost significant provincial subsidies that previously helped reduce the costs of development. In 1992, when the region's development charge bylaw was first passed, the regional municipality of Ottawa-Carleton received some \$76.5 million in provincial subsidies for programs not related to health, social services or child care. In other words, these were the moneys we received from the province that we could spend on transportation, public transit, water and sewers. By 1997 that amount had been reduced to \$44.3 million, basically the municipal support program and public transit operating subsidy, and by 1998 this will be reduced to \$0.

It is worth noting that the Crombie Who Does What commission, which recommended to the government that the public transit subsidy to municipalities be eliminated, stated that the subsidy was distorting municipal planning decisions, leading to low-density, transit-inefficient development. The government has accepted this argument. How can it now say that municipalities must subsidize land use costs for developers? If it is consistent with both its land use policy statement and the recommendation it has accepted from the Who Does What commission, it must support the ability of municipalities to set full-cost recovery development charges.

Bill 98 speaks of increased municipal accountability. If this is to be so, then why is the provincial government legislating a municipal subsidy of local property tax dollars to reduce developer costs? The government's own Common Sense Revolution, of which I have a copy not yet autographed, speaks of cutting subsidies to business by some \$200 million. Then why force municipalities to subsidize business? It is our community's property tax dollars. If our taxpayers want to subsidize business for whatever reason, then the decision belongs to their locally elected representatives, who are accountable to them for their tax dollars. Forcing a municipality to contribute to the costs of new development by provincial legislation reduces accountability, not improves it.

1140

The Ontario Legislature should also recognize that municipalities should have the ability to set differential development charges by area to reflect differences in the costs of providing community services to the new development. To require, as some have suggested, a one-size-fits-all approach in setting development charges across a municipality ignores the realities of providing service to that area, masks the true cost of land use, provides cross-subsidization from less costly, more efficient land use to more costly, less efficient areas, and creates a disincentive to make better use of existing infrastructure and revitalize existing neighbourhoods, contrary to the very principles enunciated in the government's own land use policy statement.

Let me give you an example: The regional municipality of Ottawa-Carleton has been reviewing its official plan and as part of this review has developed a regional development strategy to govern the direction of growth for the region for the next 25 years. We anticipate growing from a population of about 678,000 in 1991 to just over 1 million in 2021, requiring some 137,000 new dwelling units by that year. Our official plan designates

the major urban area within the national capital greenbelt, which has about 476,000 people, and five urban areas outside the greenbelt, which now have a population of just over 200,000, to accommodate this growth.

We have sought the most efficient land use path possible, recognizing both consumer demand and infrastructure constraints, mixing both residential intensification and new development, to reduce the projected capital cost of growth from our previous official plan, from over \$500 million a year to about \$120 million a year. My colleague who spoke to you earlier spoke about a \$2 billion reduction in those costs over the lifetime of the plan, and that's what it works out to.

Even to achieve this, according to our own staff analysis, based on, by the way, pre-mega-week announcements, mill rate increases would still be required for most of the period to finance roads and public transit; water rate and sewer surcharge increases would also be needed.

However, within the region costs per additional dwelling unit do vary by area, and I've included in my presentation a table that shows the urban growth areas, both inside and outside the greenbelt, and the cost per dwelling unit, or per door, if you like, for water and waste water and for road and transit way costs. You can see that it ranges from about \$7,500 per door inside the greenbelt, which is already developed, going out to about from \$13,500 all the way out to \$18,500 in the suburban growth areas.

The table clearly shows that dwelling costs are lower inside the greenbelt, where infrastructure already exists, and higher outside the greenbelt, where new infrastructure would have to be created. It should be also noted that were we to shift 40,000 more units from inside the greenbelt to the urban areas outside the greenbelt, it would cost us, the regional government, \$400 million more in capital costs.

By allowing development charges to vary by area, reflecting the true costs of development, more efficient land use would be encouraged, existing infrastructure better used and existing neighbourhoods revitalized, meeting those very principles that were outlined in the government's land use policy statement. The proposed legislation in Bill 98 should permit municipalities to set such differential development charges, assuming that the cost differences can be properly documented.

If it is the provincial government's wish to stimulate the housing industry, then it has its own tax dollars to do that. However, existing property taxpayers should not be forced to subsidize the costs of new development. Forcing a subsidy not only contradicts the notion of accountability, but masks land use costs, leading to less than rational or efficient land use decisions. Further, efficient land use should be promoted through differential development charges.

That concludes my presentation. I would be happy to answer any questions the committee may have.

Mr Pouliot: Good morning, Mr Cullen. You're an economist.

Mr Cullen: There's this old saying: "If you get two economists, three opinions, and there are three kinds of economists, those who can count and those who can't."

Mr Pouliot: So I should go outside and flip a coin, and give my question to the government of the day.

You have brought with you, and I find it quite insightful, a copy of the manifesto that you waved, the mantra.

Mr Cullen: The provincial policy statement?

Mr Pouliot: No, no, the other one, the one that's not autographed.

Mr Doug Galt (Northumberland): We'll have to autograph it for you.

Mr Cullen: I don't think it would have resale value.

Mr Pouliot: Madam Chair, your good office will restore order, please.

You will see that the manifesto pledges 725,000 jobs. It makes mention of reconciling the deficit, to eliminate it in the first mandate, starting with \$11 billion, down scaling to nothing. It also pledges, in four different instalments, a 30% reduction on the PIT, the provincial income tax. The federal government has deemed it necessary to reduce the transfer payments by approximately \$3 billion. Given the time compression — I mean, there's no secret here. The 30% is \$5.4 billion. You have an \$11-billion deficit going down to nothing in a very short, compressed timetable. The feds are downloading.

I want to wish you well; I'm on your side. These people shoot to kill. The answer is quite simple: Somebody has to carry the guilt, somebody has to pay, and your number came up, Mr Cullen. If I were your lawyer, I might be able to reduce the voltage, but that's about it; you're gone. Tout fini. When I see this, I see they're gutting the Ministry of Environment; MNR is a virtue of yesteryear.

I go back to, where you live you have the capacity to impose levies: commercial, residential and industrial. But this is finite, this is limited. Do you know what's happening here? The government says, "You'll have less rules and regulation, but you take care of it," so the standards might differ greatly, given a shortage of cash and partnership. It's not unlike — and I want your answer to this — telling your son and/or daughter: "Here's \$10. Buy yourself a popcorn. Go to the cinema and buy yourself a cola, a soda." They take office and they say: "Here's \$5. You can do what you wish with it." You say, "But Dad, I've only got \$5."

Where do you see the future? Where do you see your chances of success? Because this is yet one example of the downloading. Those people, namely Mr O'Toole, with respect, has hinted in his presentation before that if he could get the darned unions — he didn't say that, but he said the collective agreement — if he could get people to work 60 hours a week at a buck an hour, that's his quality of life; that's his and their sense of family unit and family value. Save me.

Mr Cullen: In responding to this — and I know there's lots of licence here — I have to tell members of the committee that my residents value services and they're willing to pay for services. I go out in my community all the time. These are property taxpayers. They do not want to see services reduced. There's some kind of mantra that says there's too much government, and in terms of regulation maybe there's an argument, but not in the provision of services. They don't like it when their parks aren't being kept; they don't like it

when their public libraries are being cut back in hours; they don't like it when their streets aren't being plowed enough or swept enough; they don't like it when there are not enough police around; they don't like it when we are not able to build enough fire stations to serve them. They don't like it. They have a standard of service that they expect us to maintain and it's very, very difficult.

Coming back to the legislation here, we are asking for the ability to provide the level of service that communities expect. It's not enough to build a house on a lot and say: "There it is. That's your community." A community implies not only the roads to get there, and the water and waste water, but also the amenities that go with it. You cannot simply build houses and then walk away and think that's enough.

You talk to your colleague from Nepean who has been lobbying for a long time, as a lot of MPPs from Nepean have been, looking for a high school for his community. That's been out there for years. The mayor of Nepean was here. He can tell you how long he's been looking for that. I have to say to you that if it can't be done directly through this government or any other government providing the capital dollars, which it has in hand — because I'm a former school board trustee and I am aware of what the Minister of Education holds back in terms of capital dollars — then allow us to provide that through setting the appropriate development charges to provide that service. Our taxpayers — it's all the same taxpayer — are not willing to pay the freight for someone else's community. It has to come back to that community. From an economist's perspective, you set that price, you get efficient use of that. If I tell you that — I won't get into an economic discussion here, but I'd love to. I hope that's a start.

1150

Mr Hardeman: Thank you, Mr Cullen, for your presentation. There's one thing I wanted to correct from the previous questioner. The Common Sense Revolution did not suggest we would go from an \$11-billion deficit to a balanced budget. The previous government said there was only going to be an \$8-billion deficit. I guess they somewhat stretched the truth prior to the election.

I wanted to go to your suggestion that the development charges should be allowed to be, shall we say, area-rated for different areas. We had a presentation yesterday that was very critical of development charges based on charging for it one thing and then not spending it and moving it somewhere else. Would you see a problem with that in area rating, that once you have charged the development charges and circumstances changed and you did not build that infrastructure, you would need to move the money elsewhere and you couldn't because you had collected it for that purpose?

Mr Cullen: If you've charged for the cost of a service — which presumably you have documented, because any area-specific development charge can be challenged before the OMB — and you have found some different means of technology of providing that service, then it seems to me it's appropriate that the moneys collected should be returned in some fashion. It's a simple question of justice there. For example, if we found a cheaper way of providing services to Leitrim, which is ranked here at

\$18,500 a door, then obviously that charge comes down, and had we collected to that point to provide that service, there has to be some means of restoring that. It is only consistent and makes sense.

Mr Hardeman: This gentleman came forward and suggested that in three successive development charges there had been a bridge that was going to be built for some millions of dollars. In the last, most recent study, the bridge disappeared, it had never been built, but sufficient dollars had been collected to build it and the money was now going somewhere else in the municipality, for other services. Do you believe the development charge needs to cover that off so municipalities can't do that, or do you not see that as a problem in your municipality?

Mr Cullen: My understanding of the development charges bylaw that we have is that the projects we charge for have to be in our official plan, have to be in our 10-year capital forecast or whatever capital forecast and have to be documented. I don't see the opportunity really coming up that we're going to play a shell game — a dangerous phrase, I know — with these moneys. If we have it in our capital plan and something else changes, then there's a case to be made to adjust the figures accordingly. But we have never viewed it.

We work closely with the development industry, and the provision of these services particularly, since we're responsible for most of the hard services — the arterial roads, water, waste water, the major trunks — you won't see these things being shuffled around and these kinds of games being played. I think really the nature of the act regulates that by the demand for detail, that you must have a justifiable project in order to be able to charge for it. You can't make things appear and disappear.

Mr Tony Clement (Brampton South): I just wanted to return to the theme of accountability, because that is a thread that is woven throughout the fabric of this bill. You and I perhaps might have to disagree on where the accountability should lie. I agree that accountability is of foremost concern, but my concern is that by allowing the municipalities unrestricted freedom to impose development charges on whatever they deem appropriate, you lose the accountability. I want you to respond to that. We were discussing yesterday — and it was before Mr Pouliot was here, so it wasn't through any melodrama on his part. Yesterday, the terminology was that these development charges can become the crack cocaine of municipal finance, precisely because the municipalities get hooked on them —

Mr Sergio: That's VLTs.

Mr Clement: I guess it's becoming a term of art.

Mr Cullen: The legislation is very clear, and your statement "unrestricted access to this" belies the facts. We have to document, we have to prove before we can ever charge anything. Whatever we say is appealable to the Ontario Municipal Board and the Ontario Municipal Board is not very conducive to imaginary projects or highfalutin standards, or whatever. Every nickel and dime that we charge for, we know we have public scrutiny, we have to have a public hearing. It's all documented. The development community comes out and challenges us — in fact, it's in our interest to sit down and work out the cost of these details — and it's subject to a third-party

review. We are very accountable, extremely accountable. Third-party review — I don't think you can even say that here.

Mr Clement: I congratulate your community for being that way. Unfortunately we have to deal with all communities in Ontario. We heard a presentation yesterday from an economist, Garry Stamm, who gave us a very detailed presentation about how development charges were levied in another community, Oakville, and none of the development charges that were raised were actually spent on the projects that they had documented, which concerns me greatly.

Mr Cullen: There is a process of review and there is recourse, because quite frankly —

Mr Clement: Well, something's wrong somewhere, because they've raised all this money for a decade and it didn't get spent on what they promised it to be spent on.

Mr Cullen: But it still does not justify requiring a copayment by a municipality. You're telling our taxpayers where their money should go, when they should have choice over it. That's the issue.

Mr Clement: What about the taxpayers in the new homes? Who's looking out for them?

Mr Cullen: If they choose to buy that package, it's their choice.

Mr Clement: They don't even know what's in the development charge. They have no idea what they're paying.

Mr Cullen: They should and they can. It's public information.

The Chair: We'll move to the Liberal caucus, please.

Mr Grandmaître: I want to follow up on this. I'm going to say something, Mr Parliamentary Assistant, and please correct me if I'm wrong.

Mr Galt: Oh, he will.

Mr Hardeman: I find that very difficult to do, Ben.

Mr Grandmaître: Every municipality comes up with a development charge bylaw and it has to be approved by the Ministry of Municipal Affairs.

Mr Cullen: It does ultimately go through the Minister of Municipal Affairs.

Mr Grandmaître: My question.

Mr Cullen: It does. It's submitted for approval.

Mr Grandmaître: It's submitted, right? If it is —

Mr Hardeman: I stand to be corrected, but I don't believe the minister approves the bylaws.

Mr Grandmaître: On development charges?

Mr Hardeman: No, I don't believe so. They do at the present time, because any municipality that wishes to —

Mr Grandmaître: This is what I'm talking about.

Mr Hardeman: No. At the present time, any municipality, after Bill 20, that wanted to raise its development charges required the minister's approval to do that because the freeze was put in on all development charge bylaws. But under the old Development Charges Act, the present act, it does not require the minister's approval for the bylaws, but all bylaws are appealable to the Ontario Municipal Board. When the municipality passes it, a developer or anyone else may appeal it to the Ontario Municipal Board.

Mr Grandmaître: Okay. A follow-up question on that: If this bylaw is approved, then a special account —

Mr Cullen: That's right.

Mr Grandmaître: Let's say it's a reserve fund for development charges to provide services for that area, a subdivision or whatever. If this is the case, your municipal books are audited every year by an auditor, and if those dollars are being used to provide other services, then the municipal auditor is not doing his or her job, because you're not supposed to use those dollars to do something else.

1200

Having said this, I'll go on to my second question. Do you think, Alex, that this bill —

Mr Clement: We'll discuss it over lunch.

Interjection.

Mr Grandmaître: No, it's not. Do you think this bill is about affordability? Do you really think so?

Mr Cullen: Affordability for whom? If I wanted to make it very affordable for the housing industry to sell their products, then I would be looking for ways and means to reduce their prices. One way of doing it, which apparently is here, is to provide a public subsidy from the property taxpayer, and I don't think that's the right kind of affordability.

What are the largest costs in terms of construction? Land. If you have cheap, unserviced land and the cost of providing the services out there are borne by other taxpayers, that's a wonderful deal. Our taxpayers, who then pay the freight downstream, not only pay in terms of the additional property taxes to pay for that development, but then pay as part of the ongoing pool on the ongoing maintenance of those services, the replacement of the pipe, the provision of public transit, whatever.

How we can get more affordable and more efficient land use is to make the market respond to market pricing. You will get innovation. You will get townhouses. We didn't have townhouses many years ago. We have them today because it makes sense; it's cheaper and it's more effective land use. We end up providing public services better because more people can take that bus because there are more people there at the bus stop to pick up. That's better for us. It means that we can provide better service. But the kind of urban sprawl that we've had to date, low-density urban sprawl that's transit-inefficient, that Crombie criticized and said: "Take away that subsidy because you're only allowing municipalities to promote transit-inefficient land use" — the subsidy masks rational, efficient land use decisions.

Mr Grandmaître: Do you think the government is breaking its own Municipal Act when it's subsidizing developers?

Mr Cullen: In a sense it is bonusing. It is providing an incentive to the industry at the cost of local taxpayers, and it's not necessary.

Mr Sergio: Alex, just one quick question: Yesterday the minister, in the introduction of the bill, said that new development charges should pay solely for new development, nothing else. Let me give you an example that we're going through in my area now, Jane and Wilson. Costco, I think, is coming in and has an application for rezoning on a large piece of land. Development charges could be maybe \$1 million, and he says, "I want it at any cost."

He's willing to pay for any improvement to the infrastructure. Not the local municipality but the regional municipality of Metropolitan Toronto, says: "We have control of the main arterial roads. You can't dump on our street all the traffic from your new development unless you do certain things. You've got to provide a new right-hand lane; you've got to widen the street; you have to build a bridge over Black Creek; you have to widen the road going into the new development; you have to put up a new set of streetlights, which add another \$1 million."

He says, "We are willing to pay."

Who should be paying for that, the new development entirely or should the municipality cover some of those costs, such as road improvements, a new bridge, traffic intersection lights, stuff like that? Who should be paying for it?

Mr Cullen: Each development is a business decision by the developer. We have constant negotiations with developers about a project coming in, its traffic impacts, and what contributions they will make to services, and I would say over 90% of the time we are successful in concluding these negotiations. They are able to mention what kind of development charges they are contributing and we are able to satisfactorily provide the additional services, whether it is a new signalized intersection or the construction of an additional lane or whatever.

What is important is that this new development requires services and if we are going to be consistent, and we are consistent, we say the developer pays, and the developer does pay. The developer is willing to pay because it's part of the business decision. What the developer really asks for is certainty in terms of understanding the costs. We provide that.

Mr Sergio: Isn't that why the local municipality should have that flexibility —

Mr Cullen: Oh, absolutely.

Mr Sergio: — to deal on a one-to-one basis with individual applications on their own merits? It is not choking that particular client if the client says: "I'm willing to pay because I understand the infrastructure is not there. The infrastructure is half a mile down the road," nothing to do with the exact site. But he understands the implications of the new development. It's bringing consequences down the road.

Mr Cullen: That's right.

Mr Sergio: He understands, he's willing to pay. It's got nothing to do with the new development, so the municipality should say, "Okay, fine; we are willing to give the approval."

Mr Cullen: This is the subject of negotiation —

Mr Sergio: Exactly.

Mr Cullen: — between the municipality and developers. The ground rules in a community like ours in Ottawa-Carleton — we've been growing for many, many years. We have good relationships with the developers. The ground rules are pretty well established. They understand that.

Mr Sergio: So shouldn't we, in 1998, allow for that flexibility?

The Chair: Excuse me. Mr Cullen, I thank you on behalf of the committee members for the opportunity to

hear your views today. We appreciate you taking your time to come.

Ladies and gentlemen, that concludes the presentations for this morning. We'll take a recess and return at 1:00, please.

The committee recessed from 1206 to 1315.

MOLLY MCGOLDRICK-LARSEN

The Chair: We'll welcome our first presenter for the afternoon, Mrs McGoldrick, councillor for the city of Nepean. Welcome.

Mrs Molly McGoldrick-Larsen: Just for the record, my surname is McGoldrick-Larsen.

The Chair: Sorry.

Mrs McGoldrick-Larsen: That's okay. It's quite a handle.

I'd just like to say good afternoon to you and thank you for the opportunity to speak with you this afternoon. Our mayor spoke here this morning, as you know. My overview will have a little bit different slant, so I won't be repeating exactly what the mayor said this morning.

Before I talk to you about Bill 98, I'd like to give you an overview of the ward I represent. The ward's name is Evergreen. It has a population of 27,000 people, with a geographic area of about 100 square miles. There are many unique aspects of Evergreen ward, but the most pertinent to Bill 98 is that it contains what we call the south Nepean growth area.

In the past five years, the population of this area has increased by about 9,000 residents. This is quite a contrast to the other residential neighbourhoods in Evergreen ward, which range from a community age of 40 years to 100 years old. I'd also like to point out at this time that the projected population for south Nepean in the next 10 years is 60,000 people. It is our only growth area in Nepean, and therefore the changes to the Development Charges Act would have great implications to the residents who would be residing in the new community.

Our mayor spoke to you this morning and gave you a brief overview of the city. I'm sure you're all quite aware of our good reputation in Nepean, our fiscal management and the fact that we're a debt-free city, what our population is and what have you. I know he went over that this morning with you. I also know that John Baird is a great supporter of the city of Nepean and is supportive of the policies the city of Nepean has lived under from the early 1970s. I won't belabour that, because I know you're aware of that.

One of the primary ways we have achieved the lowest tax rate in Ottawa was to eliminate any dependency on debt in the 1970s, thereby eliminating the payment of interest and using the money to provide services. The second way was to adopt the policy that growth would pay for growth. This policy is the primary way we provide the services and amenities to the new communities. We collect through the development charges and build the facilities and amenities that the community has come to buy into, if you will, in our city.

However, the proposed changes to Bill 98 would preclude the city of Nepean from continuing this policy and the standards our residents have chosen to have in

their community, also new residents coming into the community. People are buying into a community; they're buying into the amenities and facilities and the quality of life we have to offer them through the policies and procedures we instituted years ago: the pay-as-you-go philosophy, the debt-free city etc. People have bought into that.

Existing Nepean residents and residents who have lived in the city for a great number of years know they have paid for the services and expect to receive the same level of service in their new community. When I ask people why they chose to buy a house in Nepean, one of the responses is its sound fiscal management.

I would suggest to you that a large number of residents in the city of Nepean know of our municipal policies that say we manage our affairs in a sound fiscal way. They know we're a debt-free city and they know how we got to be that way and why we have the standards we have. They bought into it and they want to remain that way.

They also say they moved to Nepean because of the excellent level of service and the programs and facilities we have to offer. I have noted lately that high-tech firms such as Nortel, Bell-Northern and Corel, when they're recruiting professionals to come to work in the Ottawa-Carleton area, are very quick to point out the high quality of life we enjoy in this community. Part of the reason we have that quality of life is the delivery of the programs and services we can offer through development charges.

Also, I'd like to point out that the home builders use existing community amenities to sell houses. When a resident goes to a community to buy a new house, in Longfields and Davidson Heights, which I'll talk about further on — those are the names of the two communities where there have been about 3,200 homes built in Nepean in the past five years. You go to a sales office and what do they tell you about? They tell you about the Walter Baker Centre and the sportsplex. They talk about the green space we have, the Sachs forest that will be a natural forest area, that they will be able to enjoy this quality of life in the community, a park just down the street — all the facilities we are able to provide to that community because of the development charges. People are buying into that.

I keep repeating myself but I think it's important, and maybe you've heard from other people this morning that this is important to people. They've chosen this. If you would like to go for a meal, you can choose to go to McDonald's or you can choose to go to Al's Steak House or Hy's. You can make that choice as an individual where you want to go and eat. You might choose one day to go to McDonald's and you might choose Hy's another day. When you're choosing a community that you want to live in and want your family to be brought up in, this is a big investment in an individual's life and people generally only do it once.

We have found that many residents moving to this new community I talk about, Longfields and Davidson Heights, are second-generation Nepean residents. These are people whose parents bought into the system and they are buying into the same system, the same services and the quality of life which their parents bought into.

The other major group of homeowners we're seeing there are empty-nesters, who are moving from existing residential communities in Nepean to smaller homes. They're choosing to stay within their same community because of the services provided and the standards which have been established that they have bought into.

Let's face it. The money has to come from somewhere. We all know that. I've been lobbied by home builders to eliminate or reduce development charges. I know that this morning Ben talked about the great success we had at the city of Nepean with the home builders' association and the different agencies that participated in a task committee with our staff to come up with a reduced development charge, which we instituted last spring.

We have worked with these agencies. I believe we can continue working with agencies, such as the home builders' association, land owners and what have you, and the community to make these adjustments rather than having legislation imposed that dictates exactly what standards we're able to provide, what quality of life and services we're able to provide to residents.

I point out that this Longfields and Davidson Heights area, which is part of the south urban community in Nepean, is the fastest-growing urban community in eastern Ontario. There will be significant impact on how that community develops as a result of any changes, if there are to be any, to the development charges. Right now, we have 3,200 homes there. There are some amenities close by, but I hear on a regular basis from residents who live there that they want to have services. They want to have a sports facility; they want to have community buildings; they wanted this winter to have an additional ice rink put into their community because they have nearly 8,000 people living there.

When you get 8,000 people living in a community, if you don't have services for them, what are they going to do? Are we going to see an increase in vandalism, an increase in youth problems, an increase in family problems because there are no services or amenities for those families to get out to enjoy a quality of life that other people in our community have gotten to enjoy?

I'm on the Nepean library board. We are known in Nepean to have a very high level of library service. Yes, our residents have chosen to have a high level of library service. We pay about \$34 for library services. Other municipalities in Ottawa-Carleton have chosen not to do that. That's fine, if that's what their choice is, but we have chosen to pay for a higher level of service because that's what we want.

Coming back to McDonald's or Hy's, you can choose what you want. We would like to continue to be able to choose which services and the level of services and the amenities we have in the community.

As I'm sure the present government can appreciate our situation, I appreciate the government's situation in trying to turn the province around: create jobs, reduce the deficit. I know there had to be action taken, but how is the overall impact going to affect the individual resident? I think you have to consider this particular bill, Bill 98 and any amendments to it, in the larger picture. When you're looking at the Education Act and how that's going to change development charges, the hospitals, the school

boards, the whole gamut, if you add all those numbers up and include this development charge, what's the bottom line going to be? I know the next speaker is going to expand on that so I won't go further into that.

In closing I just want to point out again that we do not want to see our growth area become an urban ghetto like some of the American cities, where they haven't had the ability to collect development charges to provide these amenities for the community. The people of Nepean, the older residents as well as the new residents, have bought into a quality of life that they are willing to pay for and that they desire.

In the early 1970s, residents supported the pay-as-you-go philosophy and still do. Existing homeowners who have paid taxes in Nepean for 40 years are not willing to pay an additional 10% or an additional 30% towards the libraries. If this bill goes through, you're talking about reducing our ability to collect for libraries down from 100% to 70%. Existing communities are not willing to pay that, so what are the ramifications going to be? Are people going to say, "We're not going to have growth in our communities"? What is the impact going to be on the quality of life for people who are there?

You might suggest that the private sector can pitch in and support these facilities, as they have done in the States. I know that the private sector contributes greatly to sporting organizations, to social services. They're very supportive of many aspects of the community, and I think there will be continued support required for those kinds of services. But if we can collect up front and provide those services, I think we should continue to do so.

1330

The bottom line for me is that in my view this is not broken and we shouldn't fix it. I'm not saying we shouldn't continue to work towards improving it and that we shouldn't continue as municipalities to work with the home builders' associations and the builders to refine this a little more if it needs to be refined.

But what I suggest to you is that for the individual resident buying a new house, taking \$1,000 off the total cost of their house is not the answer. They want those services. I'm the one who they phone when they say, "I just moved into Longfields and Davidson Heights and this is what I want to see in my community," and they don't want their taxes raised. If we can collect up front, we're providing those services. I believe all of you around this table know, as many other people in the House in Toronto know, how responsible we've been in the city of Nepean. If you can use us as an example to show others how this can be done, I think it would be more beneficial.

I leave you with that. I thank you for the opportunity and would welcome any questions.

Mr Galt: Thank you for the presentation and your passion on behalf of your community. Having a balanced budget is absolutely marvellous.

You mentioned that many of the people coming in buy into the community, the services, and the fact that it is debt-free, that they really like that. Going back to yesterday, there was a lot of concern expressed by the opposition that if we do reduce the development charges as is being proposed, will that really get passed on to the new

home buyer? That's a negotiable type of thing. It depends on the open market just where that shakes down.

One of the ways — this isn't being proposed, but I'm curious to know your response — would be to put it right up front as sort of an add-on so they would see it in the price of a home, or it would be collected by the local municipality. Do you think if it was a true add-on being shown in the price of a house, the same people would still come to your community? If it was the other way, whereby the community had to collect it as a tax, the first tax on each new home buyer, do you think you'd still sell the same number of homes?

Mrs McGoldrick-Larsen: In fact I do. I have actually discussed this with a home builder. I know they don't like to collect it because it's a municipal tax, if you will. If there was a way in which it could be collected separately, I think residents would buy into it and it would be supported. Initially in your comment, you indicated that there was a question about whether reducing development charges would be passed on to the homeowner.

Mr Galt: This was a question the opposition was very concerned about yesterday.

Mrs McGoldrick-Larsen: I know that in Nepean we reduced the development charges last year 38% in the south Nepean growth area and 50% in the northern part of the city. To my knowledge, the homes did not go down that percentage to reflect the reduction in the development charges.

Mr Clement: Thank you very much for your commentary. You characterize things as a question of choice, and that's a very powerful analogy and concept. I liken it to my community: About a kilometre down the road is a new four-rink sportsplex that is servicing — there's a new subdivision near my house, but my house has been around since 1972. I was there just the other weekend. I agree there has to be choice on some of these services like hockey rinks or libraries.

One of the arguments we've heard from other deputants, not all of them but some, has been that that kind of accountability has to be spread over not just the development charge, which is ultimately some form of charge that the new home buyer pays. Frequently that new home buyer also resides in the community as a renter or as a son or a daughter of a homeowner in your community already, and they're paying that. Ultimately, because a lot of these services like rinks and libraries are used by persons in the community other than the new home buyer, they have the right to make you accountable and you have the obligation to be accountable to them. The way to do that is to spread some of the costs on to the general tax base, not just on the development charge, which is a tax base for a new homeowner, but also the general tax base. That's the critique of the current state of affairs.

I'd like you to respond to that because you've put forward a powerful case. That's the powerful critique in reply to what you've said.

Mrs McGoldrick-Larsen: From my knowledge of how we operate the development charge at the city of Nepean, we only build on to facilities depending on growth, so right now what you're saying is that all of the taxpayers in Nepean should pay for another indoor pool

in Nepean, if we build another indoor pool. What I'm saying is that we don't need another indoor pool right now because the population we have doesn't demand another indoor pool. If we have another 50,000 people who move to our municipality because we build more homes to house these 50,000 people, then we need another pool. The existing homeowners are going to use the other two pools that are already paid for.

Mr Clement: But it doesn't work out that way precisely. You know that, right?

Mrs McGoldrick-Larsen: Well —

The Chair: We have to move on. Sorry.

Mr Grandmaitre: Thank you for your presentation. I'm somewhat familiar with the suburban area and you should be quite proud of your accomplishments over the last 20 or 25 years. You're quite eloquent when you talk about the quality of life and the impact of Bill 98.

I want to ask you a question. How would you describe your taxpayers? Would they be affluent people?

Mrs McGoldrick-Larsen: I would say yes, upper middle class. The majority of residents of Nepean are.

Mr Grandmaitre: So you do specialize in attracting that type of taxpayer.

Mrs McGoldrick-Larsen: At the present time, the growth area in Nepean has a higher number of more affordable homes, primarily because of the market. We are trying to encourage more lower-middle-class, if you will, homes in to our community.

Mr Grandmaitre: You just ran into my next question. How come you have the lowest number of social housing units in your area?

Mrs McGoldrick-Larsen: How come? Is it because when the community —

Mr Grandmaitre: The price of land, services, taxes?

Mrs McGoldrick-Larsen: Is it that people couldn't afford to move out there that were of a lower —

Mr Grandmaitre: So you don't have any land available for social housing?

Mrs McGoldrick-Larsen: No, we do, in fact. We have a number of social housing units.

Mr Grandmaitre: Yes. You have 40-some —

Mrs McGoldrick-Larsen: Units?

Mr Grandmaitre: — whereas there are 46,000 —

Mrs McGoldrick-Larsen: No, I believe we have more than 47 social housing units in Nepean. I can submit up-to-date information on that.

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Mr Grandmaitre: What I'm trying to get at is that you have very, very few. In the Ottawa-Carleton area — I'm talking about regional government — they're saying, "We need more social housing." They're not going to locate in your ward, they're not going to locate in Nepean, they're not going to locate in Gloucester, for instance, because of development charges. Your land is very, very expensive and you're attracting the affluent people, the high-tech people. I congratulate you. You've done a great job of attracting these people.

I think Ottawa-Carleton has a social responsibility as well. It needs a social conscience. We have waiting lists as long as my arm, people waiting for affordable housing. My last question is, do you think that Bill 98 will resolve that affordability question?

Mrs McGoldrick-Larsen: I believe we would have the opportunity to provide more social housing through the Nepean Housing Corp if there were funds available through the provincial government to pursue further development. In this Longfields and Davidson Heights community that I speak of we have a Nepean Housing component of that community, and there was another development that was being planned and ready to go when the provincial government cut back the funds to develop more affordable housing.

I would certainly support more affordable housing going into Nepean if the opportunity was there through subsidy from the provincial government to do so.

Mr Grandmaitre: Are you familiar with your development charges —

The Chair: Mr Grandmaitre, I'm sorry. We should move to Mr Pouliot.

Mr Grandmaitre: Very good. That's the last time I'm coming.

Mr Clement: Is that a promise or a threat?

Mr Pouliot: I too sense and very much appreciate your presentation and the sense of dedication and commitment to the people you represent. The manner of humanity that Nepean attracts has been described as upper middle class. What's upper middle class, family income of how much, grosso modo?

Mrs McGoldrick-Larsen: Oh, I would think in Nepean maybe \$50,000 and up. I know that in the Barrhaven area the average family income is about \$70,000 a year.

Mr Pouliot: About \$56,000 in Ontario, so that is commendable indeed. You profess with pride, and justifiably so, that you are debt-free. I want to share this with you. This is what they refer to as spin doctoring. I was like you at one time, with respect, but I've read too many of these in the past 12 years, so I've become very much like me and it doesn't get better.

Bill 98, An Act to promote job creation and increased municipal accountability while providing for the recovery of development costs related to new growth — people like yourself, presenter after presenter, have expressed some doubt. Some of them — they're very polite and highly educated — would term this to be hypocritical, to be a sham, a mask better suited for a cheap tombola. I mean, this is a professional forum, but people are saying, because they're deliberate and systematic: "No, no, no. You are rewarding" — let's make no mistakes here. You treat your friends a little better, not a little worse. This is a reward for friends; ie, developers. The other side of the ledger is that you will be left holding the bag.

I have one question for you as you answer in terms of your ability in the future, as you see it, to stay debt-free. It's a difficult question for me to ask. Mike Harris, the Premier, has said that when all this downloading is done, the municipalities of Ontario by the year 2000, three years from now, should be able to reduce the municipal taxes — it's all going to be general purpose — by 10%. When you digest, when you assimilate everything that's coming down the pipe here, do you see yourself in three years with the good people of Nepean with the ability, and you're fiscally prudent, to reduce their municipal taxes by 10%? I'll believe you, but —

Mrs McGoldrick-Larsen: No, I don't.

Mr Pouliot: — Premier Harris spoke first. I have to believe him. Do you see yourself — you're right there.

Mrs McGoldrick-Larsen: No, we cannot. I predict right now, and I've told people publicly, that we would have to increase taxes between 10% and 20% if all of these changes come forward.

Mr Pouliot: Why is it I believe you and I don't believe Mike Harris?

The Chair: Thank you very much for taking the time to come before us today. We appreciate your perspective.

HARRY STEIN

The Chair: Ladies and gentlemen, we now move to the next presenter, Mr Stein. Please come forward. Welcome, Mr Stein. We appreciate you taking the time to come today.

Mr Harry Stein: I know your problem with trying to get back to Toronto, so hopefully I'm going to be one of the really welcome presenters because I'm going to take about five minutes. I thought maybe I was last, but I'm not because I see Mr Meunier from Kanata behind me. I see he's already been promoted to mayor on this list, so it's a good thing he's the last presenter, he can celebrate.

I'd like to thank you for the opportunity of coming before this committee and speaking to you. I'm here as an ordinary citizen. I don't represent anybody, any city, although I do live in the city of Nepean.

My name is Harry Stein and I'm here as a senior homeowner who is very concerned about the proposed legislation. I'm also president of the Lynwood Village Community Association. Lynwood Village is a community with about 1,750 homes. It's an older community in the city of Nepean, in the west end of the region; Bell's Corners for those of you who are familiar with the layout. Our community was built 35 to 40 years ago.

I'd like to say that this is my first experience in dealing with an actual bill as opposed to newspapers' interpretations and other people's writings and so forth. I spent 30 years of my adult life in the Department of National Defence as a military officer and I thought we had the lock on convoluted and difficult language, but we don't hold a candle to the people who composed these documents. I'm going to try and give you my views on it, as I've read it and I frankly tell you it's as I've read it, so if you find some clangers in it, it's partly to do with the layout and content of this bill.

My first concern is that I was taught as a military officer that the most important part of any plan, analysis or any consideration is to be absolutely clear on what your aim or purpose is. I'm assuming that the aim of this bill is as stated in the front, an Act to promote job creation and increased municipal accountability while providing for the recovery of development costs related to new growth.

Let's take a look at the first aim, which is to promote job creation. I'm assuming that the logic here or the intent is that by reducing the prices of homes by lowering development charges, you increase the incidence of house purchases, thus spurring development and thus creating jobs. Jeez, I could get a job writing these bills, almost,

after a sentence like that. If that's the right understanding, if that's what we're supposed to be doing here, let's analyse that.

My quick analysis, using a simple little mortgage book and so forth, tells me that the net effect of this proposed action will be way out of proportion with the effort being made to cause it. In other words, the cause-and-effect ratio of this exercise is a very unproductive return for the proposed legislation, even without consideration of what I consider to be other negative effects.

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Let's take the example of a modest \$150,000 new home. The estimated effect of Bill 98 on the current Nepean development charges will be in the order of somewhere around \$1,000, we'll say. In other words, Nepean's reduced capacity to require the developer to pay for development could reduce the home cost to \$149,000. If we further assume that the purchaser puts down a 10% down payment, that will leave us with a \$135,000 balance, or \$134,000 if the development charges are reduced. That's not unrealistic in today's market if we assume that a mortgage is taken out at 7% for a 25-year term. The difference in mortgage payments between \$135,000 and \$134,000 on that mortgage at 7%, 25-year term, is \$7.01 per month. Let the interest rate rise from 7% to 8% and the monthly payment goes up by \$94.20. Let the interest rate rise by 2% and the monthly payment for that house goes up by \$191.30. That, to me, is what's going to affect whether a person buys the house.

The point of this little math exercise I've just gone through is to clearly demonstrate that it is interest rates and not minor changes in house costs which drive the housing market. Current low mortgage rates, together with banks courting first-time homeowners with new programs that just came out this week, will do more for housing starts than the effect of Bill 98 10 times over. What I'm really saying is, it's not worth doing for job creation purposes. That can't be the aim.

The city of Nepean recently reduced its development charges by over 50%, which is five times the possible effect of Bill 98 on those charges before they were reduced. That reduction was forced by competition and market forces in this region. The housing market does not need provincial encouragement of the kind portrayed here. It is my opinion that the objective of Bill 98 to promote job creation is ill-founded, unachievable and will be totally overwhelmed by any interest rate changes. I think the US market went up a quarter point today. My other part of my adult life was spent as an investment broker, so that's my interest in numbers as well.

I am not knowledgeable enough to speak to you on the aim of increased municipal accountability. The details of this intent here are not clear to me. I am confident that Nepean's accountability for development funds collected in the past has been above reproach and that the funds have been expended for the purposes for which they were collected. I have been involved in community affairs for over 15 years now.

Our city has already shown itself to be very supportive of developers' needs by a recent substantial decrease in development charges far in excess of what Bill 98 will require. To avoid penalizing such initiatives as Nepean

has taken in the recent past due to its market pressures, Bill 98 should provide for exemptions for municipalities which have taken such actions in the recent past. In other words, there is absolutely no point in putting a second penalty on to Nepean, which has already gone way beyond what was the original purpose, as I see it, of this bill.

I am knowledgeable and fully capable of speaking about the future effects of Bill 98 on homeowners like myself in Lynwood Village. Bill 98 is just not fair. Homeowners who are living on fixed incomes after paying municipal taxes for 35 to 40 years in that community will be required to pay for part of development costs of future communities, in many cases paying for improvements from which they themselves have never yet benefited.

As I said earlier, our community is from 35 to 40 years old. We're still waiting for our first sidewalks. We got our first streetlights eight years ago and they're only on the intersections. We have half-kilometre lengths of streets that are black and dark. The ditches in front of our houses have disappeared finally with the pressure of a sewer separation project which was driven by the pressure to stop polluting rivers with overflowing sewage and had nothing to do with money being committed to improve our community. That sewer project cost us \$3,000 per homeowner. The province also participated in that.

Nowadays new communities, at least in Nepean, have been constructed to modern standards with all utilities and services in place under a policy which Nepean has had for years of development paying for itself. In other words, when you buy your home, you pay for those things which you are going to use and need. I wish that had been done when our community was built. This policy requires developers to put up funds required to construct all the necessary components of a modern, environmentally sound community.

In my opinion, Bill 98 will do the following and have the following effects:

(1) All homeowners will be forced to pay through their taxes for infrastructure in future communities and for which they get no direct benefit or local improvement.

(2) Future communities may not be constructed up to recent modern standards due to the understandable reluctance of municipal councils to commit general tax revenues for these projects and opting instead for deferral until better economic times, especially right now with all the pressure on budgets and moneys available.

(3) The future of green space will be jeopardized by forbidding development funds to be used for parkland purchases. Nepean, which has a rich parkland heritage, will certainly be the poorer for that.

When one couples the potential property tax increase from Bill 98 with the looming effects of mega-week transfers regarding welfare and public housing — I might add, if you are so concerned about public housing, why push it down to us? Keep it at the provincial level — as well as a myriad of other responsibilities, including costly amalgamation and the cost of health care reform, the normal homeowner can only look forward with dread.

We have five levels of governance which are downloading on us: the feds, the NCC, the province of

Ontario, the regional municipality of Ottawa-Carleton and the city of Nepean. Quite often it seems that each one is not aware of the actions of the others. Where it is very plainly seen is at the bottom of the barrel, as the income and property taxpayer.

Let me tell you, just in our community, the effects that are falling out in that. We have a little program of T-ball and soccer for kids four to seven years of age and it lasts six weeks in May and June. That's gone from being a free opportunity — the kids came to do things — until this year we have to come up with \$430 worth of fees to pay for the grass fields we're using for six weeks to have our little kids play some ball. That doesn't sound like a lot of money. That's a hell of a pile of money for our community association to put together, along with our other costs.

As I said, we've had five levels dumping on us. There is only one set of pockets that's filling up all these financial pots. The taxpayer needs your help desperately. You can help by recommending the elimination of the future burden of Bill 98. It is not worth doing for the effect it will have, and much more importantly, it's just not fair. Thank you for your time.

Mr Grandmaitre: Mr Stein, my interest in social housing is very simple. I'm very concerned that the provincial government is considering downloading that responsibility on to municipal governments, for the simple reason that I don't think we can afford it. I don't think there is a municipal government willing or ready to assume that responsibility. As you know, the social housing stock is an older stock, 25 or 30 or 35 years, and it would cost millions and millions of dollars — I realize the present government is saying, "We're going to provide you with extra dollars so you can upgrade these units and do whatever you want with them," but I don't agree that municipal governments should be responsible for 86,000 units because we simply can't afford it.

You talked about the impact of Bill 98 and you also talked about interest rates. You agree with me, Mr Stein, that in the last seven or eight years mortgages have been more reasonable than in the past. My question is, what will it take for this government and future governments to entice developers to build more rental units? A lot of people can't afford to own their own homes and the number of rental units has gone down steadily and developers keep reminding us, "The interest rates are high; we're uncertain about tomorrow; people are uncertain about their jobs," and so on and so forth. We haven't found yet, when we were in government, when the NDP was in government, and now the Tory government, a solution to attract developers. Do you think Bill 98 will attract more developers?

Mr Stein: No, I certainly don't. I think, as I said clearly, the effect of Bill 98 on development per se and the cost of housing is so negligible that I can't even see it worth doing the exercise to put it in place and have to be managed. Coming back to the more general part of your question, it's a very simple thing. It's market forces that are going to move houses and get developers involved. If there's a chance to make a buck, they'll do it; if there isn't, they won't.

You were talking earlier with other speakers about the level of Nepean citizens' income and housing and all that. We've had plenty of very cheap housing available in Nepean in the last few years. You could buy a house in Nepean for well under \$90,000 and lower. Why wasn't it being done? Get out your little mortgage books and have a look at what 9% is compared to 6.5% or 5% or so. That's what's moving the houses now. We're seeing a dramatic increase in housing movement in Ottawa-Carleton and a dramatic increase in building in the city of Nepean. That's the reason. It's interest rates.

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Just to give you an example, my son is 34. Five years ago he bought a house and took out a five-year mortgage at 9.5%, and I nearly thrashed him for it. I said, "You're crazy to be doing that because interest rates are going to fall, definitely." He just remortgaged it and the difference is enough to pay for the new car he just bought. It's a \$268-a-month difference.

Mr Grandmaître: In the GTA or the Metro area — maybe Mr Clement can correct me — housing starts have gone up by 44% or 45% and it's not happening in the Ottawa-Carleton area. Have you got a solution for this?

Mr Stein: I don't have that kind of knowledge. Certainly I read the papers and so forth and I'm under the impression that we've had quite a dramatic increase in just the last few months in the Ottawa-Carleton region.

Mr Grandmaître: Just the last few months, yes.

Mr Stein: Remember, you're talking here of a community that's had 40,000 job cuts in the federal government and so forth. This is not a land of opportunity where people are moving in because of wonderful jobs. There have been some really hard, threatening situations for a lot of people here, a lot of people who felt pretty comfortable with what they were doing and their future. It just went to pot in the last three or four or five years. That's part of it in the Ottawa-Carleton region. There are a number of things, but that's certainly part of it.

Mr Pouliot: I share your dilemma. I'm caught between the federal Liberals, if you wish, and the provincial Conservatives.

Mr Grandmaître: You're in good company.

Mr Pouliot: Did I hear you right when you mentioned that Mr Greenspan — did they move today?

Mr Stein: I think that was the intent. I don't know for sure, but I think everyone is expecting a quarter point.

Mr Pouliot: So we don't know if they moved or not. My broker sounds like that. Whenever there's a rising market he's a genius and he tells me, "Buy, it's a rising market," and whenever the market goes down he goes for what he calls intrinsic value, the value of the stocks. Bottom up, top down, he terms things. He's very good. I'd much rather talk about that. It's better news.

You see, I too debate these things. There's been a 40%-some-odd increase in demand in housing construction. There's an attempt to compare it to the better years. Yet you have low interest rates. We're supposed to be in a recovery.

When I look at things like housing and I look at your situation — not the people you represent, you're here as a private citizen, but the people you also represent, if you

wish, de facto — I tend to believe that demographics is two thirds of the housing situation, that the boom in housing will not happen, certainly in my lifetime, not with the same zest, with the same effervescence as in yesteryears. You will have some fluctuation — low interest rates, a recovery — but it's not likely that we will get the demand we had before.

Mr Stein: No, the demographics are clear on that.

Mr Pouliot: There is still quite a high inventory. Although it's moving, the upper end is not moving, and it's moving from within, so there's little need for expansion. But when we go to social housing, then we see the demographics at work. It tells the tale. Education, for instance, is predictable, Mr Stein; social housing is not. Ms Jones is 74 years old and she slips in the bathtub and dislocates her hip. We're all on a waiting list of sorts, and now the community is going to pay for that, and the list is almost endless.

I listened to you intently and I almost said, "Do we know the cost of this?" This is supposed to all take place next January 1. This is a small bill, but when we look at the overall picture, I go back, I live in Manitowadge, and we go to Hudson Bay, Fort Severn and so on and when we meet with the different small municipalities, their problem is anxiety. They're not opposed to change, but I ask them: "What about the cost of policing? What about the cost of libraries? What about the cost of social housing?" That's all going to take place. Welfare: Now they don't know what's going to happen in welfare because they hear rumours. They don't know what the cost is and there are 10 to 15 items they have to reconcile.

One of them told me last week, "Gilles, if someone is on social assistance, on welfare, now we will have to pick up 50% of the drug costs. We have no one in our small municipality who can profess any expertise as to what the formulary is. How much is this going to cost? What about the ambulance? What about capital this and capital that?" That creates with the public just as much concern as the actual happening. People don't know the cost of the expertise. Do you sense that?

Mr Stein: No question of that. I represent a community that is very significantly composed of people who moved in 35 or 40 years ago and who now are senior citizens on fixed incomes. We've had a fair bit of turnover to younger families, but there are still many people there who were part of the original community. I was not using flowery language when I said we have a lot of citizens full of dread, and the dread is not knowing, just exactly what you said.

I'm grateful for the opportunity that this committee at least moves around and is talking to people and entertaining people to come and talk to it. God knows, we wish we'd get the same reaction from a number of other proposed programs that are coming our way, not the least of which is health reform and housing and welfare — the welfare costs especially are scary — and that will have some dramatic effects on the lifestyle of older folks who are sitting there. They don't even have an indexation of any pension fund whatsoever, and it's just dollars, dollars, dollars out the door. It's more of them every day. The not knowing part is very disconcerting certainly.

Mr Pouliot: The sky won't fall, Mr Stein, but the clouds are getting very low. I have said this many times. I spent my childhood next door — you can tell by my accent — 23 years downtown, 14 years on the waterfront, in Montreal. We didn't have much, but contrary to what some people believe, the waterfront is not as poor as the other areas of downtown, because the work was aplenty. I go back to the neighbourhood every year. We didn't have much. They have more today. But they don't have as much to look forward to.

We all need the changes. I did 10 years of municipal politics and I've been doing this thing for 12 years. I can digest some of the stuff, but my problem is I don't have the sentiment that they know what they're doing. They are so far out on a limb, they're in a mess, they're webbing their legislation, and I don't want to wish them well. I know where they emanate from. I know what passion, I know who they cater to, and it's not people like myself and it's not people like you. I want to thank you for your presentation. It takes courage.

1410

Mr O'Toole: I'm intrigued with your comments, and I think there is much truth in it, that interest drives a consumer-based economy on large items like homes and cars and things like that, so I wouldn't disagree one bit with your analysis. I think you're right on. But I think the fundamental behind interest rate sensitivity basically is government action. Governments in themselves, by creation of money, ie debt and management of debt, can drive interest down. I think you'd agree, if you're an investment broker, that government action, whether it's Paul Martin — I really applaud some of the things he's doing — as well as our own government's action and many provinces — Roy Romanow in Saskatchewan — all dealing with debt.

Public debt means there's too much money unaccounted for, technically. Interest sensitivity, the government has a responsibility to have programs that balance in budgeting, which really looks at — Moody's and the other bond rating agencies, as you well know, come forward and say, "Look at the amount of debt they've got," the amount of what I'd call overcapacity in their own economy — I'm just trying help you there.

Interest is government policy and we're dealing with it. You can see the actions have really precipitated into some pretty strong paybacks for the government. In fact, the federal government's reclaiming part of its deficit is entirely the interest situation. They're paying less money for all the debt they owe. They haven't made one significant program change. This isn't politics, but I want you to understand that. That's my background, as well. I have a broker's licence and economics background.

One thing I wanted to bring to your attention is that you're a person on a fixed income. I'm moving, hopefully, in that direction. I'm still dumb enough to believe the freedom 55 stuff, that you'll be able to retire at 55 and live until you're 85. That implies that everything remains kind of flat because I'm now on a fixed income.

The cost of soft services, the arenas, the T-ball stadiums, the floodlit roller rinks, the cycle paths and all that we're building — wonderful things. The only thing is, the capital cost is not the problem; the Rotary Club or

the Lions Club takes care of that. My point is this: It's the operational cost. You and I are going to be taxed to death. In my home, with five children, I pay almost \$6,000 in taxes. Just keeping track of the last decade, I'll be paying \$7,000. That means I have to make about \$18,000 to have \$7,000 disposal income, because of the marginal tax rate, to pay my taxes. Do you understand what I'm saying? We cannot maintain the level of service we have, clear and simple. I'd love it.

Mr Stein: I'm sorry, do you have a question for me?

Mr O'Toole: Yes. The question I have for you is: Do you agree with my theory?

Mr Stein: No, I don't, on a number of things.

Mr O'Toole: I thought I had you completely convinced.

Mr Stein: Certainly, the first part I don't agree with. It used to be the fact that government could, in some ways, influence interest rates. I think you know as well, money flows so quickly globally today that a wave of dollars or anti-dollars can come this way to Canada and change our policy tomorrow. It will be interesting to see what happens in the next little while. It looks like our governor is going to try and go against the US curve. We're going to try and stay with no interest rate — let's see how long that lasts. I suspect it won't last a month because the dollar will torpedo and the international money will force us, and that's what has moved our interest rates. Governments can talk as much as they want and come out with all these policies but it's strictly domestic.

I come to your last question, I guess it was a question, to do with maintenance. We've been pretty careful in Nepean I think in planning the operation of our facilities, in that I've gone to many council meetings and berated people about this and that and so forth on costs, but they're pretty clear to indicate what will be the operating costs and how that's going to be handled in the future. Yes, there's concern there but it's something that the city of Nepean and its staff and council have been aware of and are taking into account, whereas a lot of other places don't. Certainly, the federal government, in many of its programs, never considers what it's going to be the next year.

Mr Hardeman: If I could, Mr Stein, very quickly get back to Bill 98 and the development charges, you said the city has just recently reduced the development charges in its bylaw through negotiations with the development industry, and I presume with the community in general. When they did that, did they reduce the level of service they are charging for or did they find that in the past they had been charging for a level of service they were not building?

Mr Stein: There are two or three factors. There was quite a study done on it. First of all, it was competition in the region to begin with. Other communities were lowering development charges, so Nepean had to do that as well.

Mr Hardeman: But when they were doing that, in fairness, when they lowered them arbitrarily to be competitive, were they then taking tax dollars to fund the remainder?

Mr Stein: No. I want to finish the other half of that in that part of the reduction and part of the study was to determine how fast we had been growing and how fast it looked like, and this is the demographics of the future we were talking about earlier here. Growth is not going to be at the same speed at all. Therefore, the amount of funds that was needed over the next 10- or 15-year period to build the rink Mrs McGoldrick-Larsen talked about and so forth wasn't there; therefore they were able to show a reduction in the number of rinks, the number of this and that. It all worked out that charges could be lowered by that amount.

Mr Hardeman: I stand to be corrected, but if everyone is paying their fair share of growth cost, the speed of growth should not impact how much each door or each house has to pay, should it?

Mr Stein: Sure, because it influences the growth of the population, and that's when you need the things like rinks and those larger things that cost so much money.

Mr Hardeman: But if I buy one millionth of a \$1-million rink, should it make any difference how long it takes to get to a million users?

Mr Stein: Sorry, give me that again.

Mr Hardeman: I said if my house is responsible to pay for one millionth of a new rink, which is going to cost \$1 million, how long it takes to get there shouldn't make any difference.

Mr Stein: I see what you're getting at: the per-unit cost.

Mr Hardeman: In fairness, it's somewhat creative bookkeeping to be lowering the rates, because it's going to take longer to develop.

Mr Stein: I don't doubt that. There was a desire to do it. There's no question about that.

Mr Hardeman: Thank you. That's what I wanted to hear.

The Chair: I'm sorry, we have to break this off.

Mrs McGoldrick-Larsen: Would you allow me to add one thing to that?

The Chair: Very briefly.

Mrs McGoldrick-Larsen: I just wanted to add in response to that reduction, the other significant change in the Development Charges Act is that we amortized the stormwater ponds over 20 years rather than 10. The growth of the community was going to take 20 years, but it had been amortized previously over 10, so they expanded that out. That was very significant, and that was again the developer and the city working through that to come up with that.

Mr Grandmaitre: But when you double the amortization you're doubling the cost.

The Chair: Thank you. We are slightly over time, but I appreciate your coming this afternoon. Mr Stein, you are the first citizen to come before us. We appreciate your civic-mindedness.

CITY OF KANATA

The Chair: We'll move to our final presenter for this afternoon, from the city of Kanata, Mr Meunier. Welcome. Your presentation will be 30 minutes, including questions from the caucuses. I apologize. We have

inappropriately credited Mr Meunier as being the mayor. In fact, I understand he's the CAO of the city.

Mr Bert Meunier: That is correct. I wanted to correct that. I wouldn't want to have that promotion.

The Chair: Our error.

Mr Meunier: I've provided a copy of a written presentation. Mayor Nicholds wanted to be here this afternoon; at the last minute, she wasn't able to come. The committee has been spending a number of hours reviewing and receiving presentations, so I'm not going to bore you by reading this presentation but I would like to cover some of the highlights presented within the document.

Our first observation concerns our opinion that there seems to be a contradiction between the proposals that have been submitted under the revised Municipal Act and Bill 98. Our understanding is that the intent of the government is to give municipalities more autonomy and the ability to control their own affairs. We see the changes proposed by Bill 98 going in the opposite direction, if anything, in terms of imposing a number of restrictions in terms of how we do business, notwithstanding the fact that I think it does not recognize the differences that exist across the province between municipalities and it's going to have a different impact on different types of municipalities across the province. Wouldn't it be simpler to simply allow the municipality to govern its own affairs in that respect so it can react to its own environment? That's our first point.

The second point, which has a substantive impact on the city of Kanata, is the fact that we have been making business decisions based on existing rules of development charges. Those decisions are related to capital expenditure. You can appreciate the fact that those types of investments are long-term investments. If there are to be changes to the Development Charges Act in terms of how it's governed, some of the decisions that have already been made and committed to based on a business analysis of the past few years will be impacted because of the changes being proposed under the current bill.

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The city of Kanata is not a mature municipality; it's a municipality that's in a very high-growth period of its life. We're developing our town centre; there are quite a number of residential neighbourhoods being developed. In that respect we have to look at providing the facilities required for that high growth. We're the municipality with the highest growth in the region here.

When we provide major facilities, you can't build 10% of an arena or 25% of a city hall. When we make a business decision to invest in a facility, we have to borrow to make sure they're available for the growth that is coming up. Those decisions were made at a time when the rules were set a certain way. If the rules are changed and do not allow for certain payments to be made against certain types of facilities, such as administrative facilities or recreational facilities, we have concerns that the investment that had been made in the past will not be able to be repaid and the municipality will be stuck with trying to raise a tax to provide for the debt payment for these particular facilities. We've elaborated on that in point 2 of our submission.

In point 3, we have a concern in terms of the indication that we're going to set the definition of the average service level within a municipality. Municipalities make different decisions based on their citizens in terms of the level of service for different services. The city of Kanata, as an example, has done extensive review with both our citizens and citizens' associations and also our builders in terms of identifying the proper level of service for certain types of services. In some cases, they are the lowest that the city of Kanata has had in the previous 10 years. In some cases, they are the highest because those are the services that our citizens want to have. If we dictate that the average of the 10-year period has to be the one that is set, that's going to cause us some problems in terms of some of the services preferred by our citizens. By definition, if you do the mathematical analysis, each time you pick a level of service that's below the average, the next time you review it your average has gone down. Why restrict the rules to dictate how this calculation is going to be made? We think it should continue to be flexible.

Point 4: In terms of the impact, we've done a detailed analysis of our capital plan, and because of the provisions that affect eligible expenditures in different types of categories, we've identified the impact on the city of Kanata.

To summarize, for the items that will not be covered in the future, under (a) the impact is roughly \$1.7 million. For the category that will require a funding of 30%, the impact is \$1.6 million. For the category that's going to require funding of 10%, the impact is \$1.7 million. That totals approximately \$5 million from 1999 to the year 2005. Why the year 1999? Because there's a transition period of 18 months, as we understand it, before these would come into effect.

We felt we had to express that \$5 million in relationship to our capacity. For certain levels of government, federal or otherwise, \$5 million may sound like not very much money, but to give you an appreciation of what that means for the city of Kanata, that \$5 million as it pertains to our total capital program for those years is equal to 12% of our capital program. As it relates to the component that's only growth-related, that represents 22%.

Another figure I want to give you which is not in the text but gives you the impact of the magnitude is that a 1% tax increase for the city of Kanata covers \$100,000. It's a bit less, as a matter of fact, than \$100,000. For us to recuperate and provide for that \$5 million would mean that we would have to increase taxes by 50%.

Those are the types of numbers we're talking about in terms of the impact of our analysis and, as best as we know, what the bill is proposing right now in terms of changes to the Development Charges Act.

The next point: There is a provision that says expansions will be covered up to 50%. We have concerns about that. We are unsure whether that applies to industrial buildings also. To give you an example, if tomorrow morning Newbridge proposed to increase by 50% one of their 10-storey buildings, does that mean they would be exempt? That would have a large impact on us. We're unsure as to this clause, but we would caution you in

terms of its applicability in terms of industrial-commercial buildings.

Number 6 we have problems with, in terms of the definition of exclusion for our local services. I'll give you an example: We have made arrangements, with the cooperation of the builders in Ottawa-Carleton, where within the plan of subdivision — some of the builders were complaining that they in their particular plan would have an arterial road or a collector road when the next subdivision or the one to the south of it might not have such a road, and why should they have the burden of that particular expenditure, even though it was within their own plan of subdivision?

They made that representation three years ago when we made one of the modifications to our bylaw, and we agreed with that. We provided that the municipality would provide for 35%. We calculated the additional costs of such a road compared to a local road and it was 35% more cost. We provided that the Development Charges Act would provide for 35% of funding back to that developer so that all developers within the city of Kanata would have the same level playing field. They thought it was great and we thought it was great and it was a good point that was made by them.

Our ability to do those types of analyses and to provide for that type of flexibility is going to be handicapped by definitions provided within the bill. The more of those types of rules that will be set in terms of which local services are included or excluded is going to prevent us from having the ability to have that flexibility. That's our point on point 6.

In terms of point 7, we have some concerns about the proposal, as we understand it, that before we calculate the development charges component and our contribution, we will have to take out any grants or any other sources of funding. That, in our opinion, goes contrary to a direction we were trying to do in Kanata, which is to establish partnership with either private companies or with public sector companies to fund certain projects.

An example: A couple of years ago we built the Kanata Theatre. That theatre, believe it or not, was funded one third by the Kanata Theatre, which had been fund-raising for 25 years to make sure they had funds available to build that building. That enabled us to build that building, and some of the other components came from other sources.

If we were in a scenario where we would not be able to recognize that and exclude it from the city's participation, it would handicap our ability to entertain those types of projects, because we're going to be hard-put to fund some of the other services we're looking at. That particular building, to complete that example, is operated 100% by the Kanata Theatre. It does not cost the city of Kanata a penny.

We have concern that the wording of the amendment is going to make it difficult or preclude our ability to enter into partnerships with third parties in terms of funding those types of projects.

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In terms of point 8, we have some concerns and we're not sure of the interpretation: If we were to have credits in services payable right now to some developer, will the

act provide that because of the reduction of 10% and 30%, the city is now going to have to find the money to pay for its share of those credits owed back to developers?

Number 9, a general comment based on some of the observations I've just made: Given the fact that a lot of our business decisions have been made under a system that has existed for 15 to 20 years, we find it difficult to suggest that now we're going to afford a transition period of 18 months and have the impact of these debt payments and other obligations that were undertaken under the old rules.

We do not agree with the amendments proposed under development charges, but if you were to proceed with them, we would suggest that you review the transition period in terms of its length or in terms of determining that certain things that have been done in the past are grandfathered so we don't have to go back and revisit those things and find new funds to pay those things back. Those are our suggestions.

That's the end of our presentation. I have attached to the presentation a detailed analysis of the projects affected under our capital plan. This is not all of our capital plan, only the component of the capital plan that is affected. You will notice that some of them indicate they are debt-related projects. Those are the ones I have mentioned where a decision has been made in the past, and we have some concern that we're going to have to find the money to fund those now. Out of the \$5 million you will notice it's approximately 50% of that, so we've got \$2.5 million of projects that are precommitted that, technically, under the new rules of the game, are not allowed and we would have to pick up some of that funding. We have some concerns about that.

At the end of the presentation, for your convenience, we've attached a copy of the city of Kanata's resolution with regard to the amendment. This was sent a number of months ago, but we've attached it just for your convenience. That's the end of my presentation.

M. Pouliot : Bonjour, Monsieur Meunier. La vie est belle ?

M. Meunier : La vie pourrait être plus belle.

Mr Pouliot : Oui. I see in your presentation, the last page has a resolution. Was it duly moved and passed by the members of council?

Mr Meunier : Yes. Somebody was mentioning to me before I left the office that maybe we should have attached with the original a duly signed copy. It's a copy of our resolution, but it was approved by council. As a matter of fact, as I said, it had been forwarded to the minister a number of weeks ago under separate cover.

Mr Pouliot : The operative clause is that it strongly opposes the new development charges legislation. Council sees right through the veil here of what is being done.

Your community is relatively new. In terms of your infrastructure, it's not fully domiciled, it's not fully built yet, right?

Mr Meunier : No. The municipality of Kanata is presently 55,000 population and is scheduled to grow to approximately 100,000, so we're almost looking at doubling, and that's according to the official plan of the region.

Mr Pouliot : I see. So when you have your assessment dollars, the development charges would fund the debentures. You go borrow money, the development charges pay the debt, right?

Mr Meunier : Five to seven years ago — the municipality was quite young then, approximately 35,000 to 40,000 population — we had a greater number of projects and there was quite a bit of borrowing for those projects. Recently we've tried to avoid that, but we still have a restricted number of projects that we have to consider because, as I explained earlier, it's very difficult. The delivery of service for capital is a step process. The politicians wait for a certain amount of political pressure to have their community centre, their pool or whatever, and then there comes a time where there's enough population there that want their service that you have to put the service in place, and it's not always the technical moment, that where you have one pool per 20,000 people, now's the time to build 100% of the pool.

Mr Pouliot : When I first moved — and I was talking to you, I recall vividly — I paid a development charge. Now I'm a homeowner and you're coming to knock on my door again for a tax levy because you no longer have the means, you no longer have the jurisdiction to levy. This is what Bill 98 says, but it also tells me as a consumer that I could pay twice. Is that not so?

Mr Meunier : Yes, it's part of —

Mr Pouliot : That doesn't make any sense.

Mr Meunier : If you read our presentation, it is written here that we have concern that we will be forced to double taxation, because people have already paid through development charges and now we're going to have to tax them for our inability to be able to provide for that.

Mr Pouliot : So I'm getting it right between the eyes. I mean, really. No question.

Mr Meunier : I'll let you be the judge of that.

Mr Pouliot : Thank you very kindly. I don't envy your job, sir. Thank you.

Mr Jerry J. Ouellette (Oshawa) : Thank you very much for your presentation. A couple of quick questions. What method of reporting do you have to the various individuals who pay the development charges that they are actually being spent in those areas?

Mr Meunier : If you're familiar with the Development Charges Act, within the act it provides that we must do a fund accounting of our development charges a minimum of once a year. Under that legislative requirement we do that once per year, but we do not limit ourselves to that. We also do, almost on a yearly basis, a review of our Development Charges Act in Kanata where we sit down with three parties. The three parties are the community association representative that represents the citizen, the builders that represent the builders that pay for the charges in the city —

Mr Ouellette : That doesn't seem to be the norm through the province.

Mr Meunier : We not only do an accounting of our fund; we do an accounting of our service level. Our service level document — I wouldn't want to bore you — is about this thick, and it's developed page by page with the builders and the community association.

Mrs Marland: Are the books open then for anybody to see?

Mr Meunier: Definitely.

Mrs Marland: Thank you.

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Mr Ouellette: As I mentioned, yesterday we heard quite the contrary from a number of communities, that that's not the case at all. So that's good.

One of the other questions: In your point 1 you had mentioned more authority. Yesterday we had a presentation that suggested that we proceed with more authority and I'd just like your comments on that. What about having the municipalities collect directly from the purchasers the development charges, as opposed to having the developers do that? What would be your position on that?

Mr Meunier: I'd have to think about that one. I'll give you the practical side of things from "un fonctionnaire" in terms of its applicability. We deal presently in the city of Kanata with maybe four or five major builders. It's very easy for us to develop a business relationship with these four or five builders so that if they collect through their sales and pay us, then it is easier in terms of accountability. I was giving you the example of changing some of the rules for our mutual benefit. It is also easier to deal with developers in terms of doing those types of exercises as opposed to dealing with people that are not a part of the community.

We also have a provision in Kanata, as an example, and I believe we were the first ones in Ontario to introduce that, where the builders can wait six months before they actually have to pay us. We give them a grace period. Those initiatives were put in place as a result of their representation with us in terms of helping them manage their own situation. Thinking out loud, I think it would be preferable to continue with the developers in that respect because it would make it very difficult with each one of the —

Mr Ouellette: The concern was that if it went to the municipality, then they would have to justify where it was being spent and the individuals would have more influence on how it was being spent.

Mr Hardeman: I just want to quickly go back to number 9 and your 18-month transition and your concern with that not being long enough. Could you elaborate on that just a little bit? I'm not sure if going longer would solve any of your concerns.

Mr Meunier: Two different points and the first one we would have stronger concerns about. The first one is that we as an example, specifically the city of Kanata, have a number of projects that we have built ahead of time. As I say, it is hard to wait until you get 50,000 people to say now we are going to build the arena, wait until there are exactly 50,000 because that's our level of service, one to 50,000. Usually what happens is that halfway through or in a progression you build the facilities. You don't have the money in hand to do that so you borrow the money.

Our concern is that we have done that for a number of our projects, and they are listed there. We will be paying for the debt of those. If they are declared projects that are not admissible for development charges, we will no longer be able to collect money in the future for the

residual part that we've borrowed, if it was 40% or 25% or 50%, and we are going to have to turn to our existing payers to say we've borrowed to build a full arena or full city hall, now we're going to have to tax to provide for those debt payments. Our suggestion on that first point would be, if the rules change, would it be possible grandfather those projects that existed under the previous provision? That's our first point.

The second point is in terms of our ability to turn around in terms of the \$5 million impact in our total capital budget, because in our community it's a very serious discussion in terms of saying to people, "You know, the community centre we thought we had slated for 1998, well, now we have to provide 30% for that."

As a matter of fact, we have a point in case in Bridlewood. We had a facility that we had on the books for 1996. It was postponed for 1997 for feasibility study. The community has just come with a report to council, two weeks ago. They are expecting us to start building that in 1998 and we are now saying to them it looks like the provisions are going to change. Are we going to be faced with funding 30% of that? If that's the case, then we have to look at our other source of funding. We are maybe going to have to put this project off a while longer while we figure out how we are going to refund our total package. In the scope of a 10-year capital plan, 18 months is not a very long to turn around.

Mr Grandmaitre: Bert, welcome. It is always nice to question a former employee.

Mr Meunier: Yes, Mr Mayor.

Mr Grandmaitre: On page 1 of your presentation, very last paragraph, you say, "Since the City of Kanata currently collects development charges to make its debenture payments on facilities that have excess capacity...." Do you collect development charges to pay the interest rate on those debentures?

Mr Meunier: What we do is exactly the point that I was just making a few minutes ago. I'll give you an example. Our Kanata recreation complex, which is a two-ice complex that you may be familiar with, was built ahead of the full service level requirement.

Mr Grandmaitre: Yes. I can understand.

Mr Meunier: Although the story is much longer, the city had to borrow against that project. So some of the existing use is being provided by the existing citizens, and some of the service level requirements for the future are built into that facility, because at the time they built it, they didn't necessarily need two ice. As a matter of fact, to make a point in case, the city was actually renting one ice out of the two, because they just didn't need it. So yes, we have built a facility for —

Mr Grandmaitre: And that's my question, Bert. When you're looking at, let's say, a 15- or 20-year debenture, how can you estimate the development charges based on future interest that has to be paid on that debenture for the next 20 years?

Mr Meunier: Most of our projects are on a 10-year framework.

Mr Grandmaitre: Okay, 10 years then.

Mr Meunier: As you know, those debentures are — it's not like going to the bank on an open loan or a mortgage.

Mr Grandmaître: I know. They don't call it.

Mr Meunier: They don't call it, and it's for a fixed interest rate. So yes, we know the answer, we know our exact payments, we know when the payments are going to stop.

Mr Grandmaître: See, I'm learning something. My second question is, when you talked about the transition period not being long enough — 18 months, if I'm not mistaken — what will be the impact on let's say next year's budget? What will be the impact on your mill rate for next year on the number of capital programs?

Mr Meunier: If we translated the \$4.923 million into a mill rate impact, as suggested, it's approximately —

Mr Grandmaître: I believe \$100,000 is one mill.

Mr Meunier: Yes. So it's approximately 50%.

Mr Clement: For one year.

Mr Grandmaître: No, five years.

Mr Meunier: For the six-year period, 1999 to the year 2005.

Mr Grandmaître: That's 49%, sir. Yes, I follow you. He doesn't. I follow you.

Mr Clement: It doesn't work that way.

Mr Grandmaître: It does. So you would need to increase your mill rate by 49%.

Mr Meunier: Yes. Our analysis is the \$5 million that we need from the year 1999 to the year 2005. That is a six-year period.

Mr Grandmaître: I get that.

Mr Meunier: And the equivalent mill rate room required over that six-year period is 50%.

Mr Grandmaître: Does that mean, Bert, that over the next six years, people in Kanata can expect a municipal tax increase of 8% or 9%?

Mr Meunier: No, I don't think so. That's the other side of the ledger in terms of saying — what the municipality is going to be facing is some mill rate increase, but the reality as you well know, as a politician, is that the likely other component is a drastic reduction in the capital plan. If the developers think this is going to lead to the same level of service in terms of roads and other things, with the same provision, that's not going to happen. They're dreaming.

The Chair: Thank you very much for taking the time to come before the committee this afternoon. We appreciate hearing from you.

That's our last deputation for this afternoon. This committee will stand adjourned until tomorrow in St Catharines at 10 am.

The committee adjourned at 1450.

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First Session, 36th Parliament

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Mercredi 26 mars 1997

**Standing committee on
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**Development Charges
Act, 1996**

**Loi de 1996 sur les redevances
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STANDING COMMITTEE ON
RESOURCES DEVELOPMENT

Wednesday 26 March 1997

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Mercredi 26 mars 1997

The committee met at 1008 in the Ramada Parkway Inn and Convention Centre, St Catharines.

DEVELOPMENT CHARGES ACT, 1996

LOI DE 1996 SUR LES
REDEVANCES D'AMÉNAGEMENT

Consideration of Bill 98, An Act to promote job creation and increased municipal accountability while providing for the recovery of development costs related to new growth / Projet de loi 98, Loi visant à promouvoir la création d'emplois et à accroître la responsabilité des municipalités tout en prévoyant le recouvrement des coûts d'aménagement liés à la croissance.

The Chair (Mrs Brenda Elliott): I would like to welcome everyone to the third day of public hearings on Bill 98. We are very pleased to be here in St Catharines and look forward to the presentations as they unfold today.

Just a reminder that the minister has released proposed draft regulations for Bill 98 which are available at the table, and in his opening remarks he indicated, and I quote, that he intends to move the following motion to amend Bill 98 during clause-by-clause review: "The requirement that municipalities contribute 10% to the growth-related costs of water and sewer systems, roads, hydro and fire and police services would be removed from Bill 98."

CITY OF NIAGARA FALLS

The Chair: I welcome our first delegation, from the city of Niagara Falls. I believe it's Mr Kallio, the city solicitor, and Mr Puttick, a councillor. Is that correct? Welcome. Your presentation time is 30 minutes. That includes your presentation and questions from the caucus.

Mr Ray Kallio: Thank you, Madam Chair and members of the committee. On my left is Mr Sam Iorfida. He's the manager of development for the city of Niagara Falls. He'll be my technical adviser.

I should also mention, Madam Chair, that just as we were pulling out of the parking lot, we received hot off the wires the press release with respect to the 10% reduction being eliminated or being proposed by your government to be eliminated. Obviously my comments were prepared before that time, so we'll try to work around that.

Madam Chair, the city has supplied our comments. These are brief points, but we ask that this committee consider them and reflect upon them in its deliberations.

The city of Niagara Falls does oppose Bill 98 wherein the bill purports to change the rules of the game with

respect to development charges established pursuant to the Development Charges Act.

For a number of years, municipalities and developers both stated that there should be one clear set of rules or guidelines to regulate the industry, to have a level playing field. That was finally done in 1991. Hundreds of thousands of dollars were spent on consultants. Municipalities took it very seriously, knowing that developers or representatives of the development industry could appeal to the Ontario Municipal Board, and, as I understand it, very few of these bylaws were appealed.

Things were working fairly smoothly, we thought, from the municipal side; obviously the other side has a different motivation. We just have to wonder why, when it ain't broke, you're trying to fix it, why you have the 10% and 30% and now we're down to the 30%.

For a number of years — I've been a lawyer for 20 years now, primarily with municipalities — it was always sort of an ebb and flow: There would be a case at the OMB that the developers would win and they'd pat themselves on the back, and then a couple of years later the municipalities would win and they'd pat themselves on the back. It went back and forth, initially with hard services, then with soft services. I can remember our development agreements. We would have to put boiler-plate on it to ensure there would be no review by any court etc. There was a lot of wasted energy. Everybody was trying to protect their own interests: the municipality, the public interest; the developers, their own interests.

When we have a set of rules that I think we can all live with, I would urge this committee to consider that the tinkering and the tampering with something that is working well, where time is money to both sides, should really be proceeded with very cautiously.

We have looked at the Association of Municipalities of Ontario's key policy positions. We thought it was an excellent presentation, dated February 20, 1997. The city of Niagara Falls supports it 100%, and there are several key features, if I could briefly just go through them.

The first point AMO made was that Bill 98 would erode the municipal responsibility for determining local property taxation policy. This is a theme that AMO and all the municipalities, which I'm sure you've heard, have said. The fact of the matter is that there is a balance in development charges, the balance being that new growth should not subsidize existing taxpayers and, likewise, existing taxpayers should not subsidize new growth. The entire exercise, at least we thought from the municipal point of view, was to try to get this balance. So where there was excess capacity, the developers got a credit. Where there was a benefit to the existing taxpayers, the developers got a credit. It's this balance that has to be

maintained, and if you swing the equilibrium too far one way or the other, you throw it out of kilter, and it will take years to get back.

The fact of the matter is that the taxpayers do not want to subsidize new growth. The taxpayers are very conscious of the fact that the new residents, while they welcome these new residents, will be driving on roads that have been paid for, will be attending at libraries that have been paid for already by the taxpayers, will be attending at arenas. Likewise, the new pool goes in and existing taxpayers will be using that pool. You have to strike and maintain this balance.

So if the whole philosophy of the Development Charges Act, the 1990 act, was to strike this balance, subject to review by the Ontario Municipal Board — where are the new growth benefits, where are the benefits to the existing taxpayers? — this 10% and this 30% doesn't make sense. It's illogical. To try to say that it's to boost this industry or that industry, it wouldn't sit well with the taxpayers, and I'll get to that later on in my presentation.

Bill 98 restricts the municipal autonomy and authority to deliver infrastructure services and will further destabilize the municipal revenue base. AMO, which the city of Niagara Falls agrees with, is asking to remove the requirement for the mandatory municipal copayments from non-development charges at sources.

The next one is that if a service level and service standards are needed, they should be based on a minimum of 10 years, with the ability to project growth funding needs for service categories to the ultimate development scenario.

As we read the bill now, you can go back 10 years to get your average service level, and that's fair to a certain extent. You can't now all of a sudden when you have the opportunity, as they did in 1991, go crazy and have the gold-plated services that we've heard so much about from the development industry. But by the same token, you have to look further ahead as well. There are different trends, different changes, primarily in the soft services, and there should be, in our respectful submission, a balance again: to go back five years or a reasonable period of time to establish your average services, and that's fair, but also to be able to look ahead, to deal with trends or matters that we don't know about now. To be locked into a 10-year period, I submit, will be unduly restrictive to a municipality's ability to change.

Likewise, the second-last point: The municipal service level standards should not apply to services where the province sets the standard of service. As we understand it now, it is slowing down, but in past years there have been numerous provincial directives forced upon municipalities, and municipalities had to deal with it. If we are now to be restricted in what we can deliver in terms of services, there should be some consideration given when it's provincially mandated. There have to be some allowances made, in our respectful opinion.

The last point AMO makes on the first page in our view is a very significant one, and that is that municipalities should determine what services are needed within the service categories. For example, if facilities such as museums and theatres are desired by a community instead

of soccer fields, they should be eligible as part of the recreation service category. Again, the theme that AMO is presenting, the theme that we hope to convey to you today, is that there are local needs, local responses, that should be considered, rather than the broad-brush approach.

As we'll state later on, we're worlds apart from GTA not only in terms of distance but also in terms of needs. If you look at our development charge and compare it to the city of Vaughan, not only monetarily is there a vast difference, but the fact of the matter is that people in Vaughan, if the development industry calls it gold-plated, they want gold-plated. They know what the cost of a house is, and they know what the value of their home is and what they can sell it for. You compare the housing market in Vaughan to Niagara Falls: worlds apart. But Niagara Falls, for example, hosts the Coors Light slo-pitch tournament. It brings in millions of dollars to our economy. We want baseball fields, but if we were more culturally inclined and we wanted museums or theatres, it's what the municipality wants, it's what the taxpayer wants, and if the taxpayer doesn't want that, the taxpayer will vote at the ballot box if the local politicians aren't responsive to what the taxpayers want. It shouldn't be dictated by the development industry; it should be dictated by the people. I don't want to sound preachy on that point, but the fact of the matter is that each municipality, we submit, is different and has different needs.

The next point on page 2 I think has been dealt with, given the press release we received today with respect to the hard services.

Municipalities must be able to clearly link the planning approval of a development to the external services to a site that must be constructed prior to development. The bill would not allow this because of the copayment requirement. Given the process that is in place for passage and approval of a development charge and the attendant right of appeal, there would be sufficient safeguards to protect the development industry: again, the balance between a municipality determining what it can afford and what new growth should pay for.

As well, the last point at the top of page 2: The costs of the studies required for the preparation and defence of the development charge bylaw should be recoverable under the development charge bylaw. In our view, that just makes sense.

We'd like to deal with the experience from the city of Niagara Falls. When our development charges bylaw was passed in 1991, there was full consultation with the local development industry. As a result of these consultations and meetings, city council lowered the development charge from that recommended from our economic consultants, which consultants were prepared to go to the Ontario Municipal Board and defend their numbers. City council looked at the numbers, heard the concerns of the development industry and lowered the development charges. As well, the development charges were phased in over a period of time, a five-year period for the commercial charges. The residential charges were phased in over a three-year period.

We don't know if any other municipality did that, and quite frankly, I don't think city council cared. They

wanted to do what was right for the development industry and what was right for the taxpayers and the new residents.

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The next point is that the bill sets out what the hard services are but doesn't set out what the soft services are, which may lead to conflicting interpretations and costly appeals.

The 30% reduction for soft services in our submission is too drastic. The effect of this could be that where there's a contribution required by the taxpayer, a municipality may be very reluctant to spend that money for the soft service and may adopt a "Pay for it when we can afford it" attitude, which would deprive the entire municipality, all the citizens, new and existing residents, of a soft service. A soft service, whether it's a soccer pitch, a library or whatever, does contribute to the quality of life in that particular municipality.

Again, if the process is followed properly, there should be that balance between new growth and existing growth. It's there now. The protection and safeguard has been built in, and at the end of the day, the Ontario Municipal Board, an independent body, is there to adjudicate. Everybody in the development industry is familiar with the OMB; so are municipalities. We know the rules of the game. We know what we can or cannot get away with.

The next point about hard services: It's interesting that Mr Leach backed off on the 10% for hard services, because in our view that would have been much more serious. We're talking much more money. When you talk about hard services and soft services, even with a 10% reduction, in this day and age of grinding out every dollar, of spending it wisely, from my experience municipal council would have been very reluctant to put out money for hard services for new development. We've seen that in Mississauga. I don't think it was a flair for theatrics; I think it was just as a matter of necessity.

The taxpayer, and there is only one taxpayer, may be potentially saddled with large costs depending on whose numbers you believe with the announcements during the mega-week, if there is this billion-dollar shortfall. But more importantly, Madam Chair — and I understand these are AMO's numbers — is the approximately \$550 million that will be transferred. Maybe it's less now because the hard service reduction is eliminated. It will be transferred for the first time from the development industry to the taxpayer. This is a first for this province. So now we are saddling the taxpayer with something the taxpayers never had before, and that is subsidizing new growth expenses or costs. That is something we submit is very significant and very worrisome for our taxpayers.

The city of Niagara Falls has had a zero-percent-increase budget for six consecutive years. In fact, in almost every budget there was a small decrease. In Niagara Falls, and we're speaking only for Niagara Falls, there is an expectation from the taxpayers that there will not be an increase. We've had to change. We've had to do business differently. If the taxpayers are told, and they will be told, that their tax dollars will subsidize new growth, costs that we can as objectively as possible point to new development, there will be a revolution. Taxpayers are not in the business of subsidizing new devel-

opment. All the arguments that you'll hear — it's common knowledge now that the development industry is not committed to passing on any savings to the homeowner as a result of this bill. That we understand from reading the Toronto Star.

Interjection: That's okay. They read the Toronto Sun.

Mrs Barbara Fisher (Bruce): Gospel. Here we go.

Mr Kallio: I thought I was doing so well.

Mr Gilles Pouliot (Lake Nipigon): Stuck with the Toronto Sun.

Mr Kallio: The housing industry, to a large part, is governed by the market. In the late 1980s, when I lived in the GTA, housing prices were going up \$10,000 a month. There was no concern from the development industry or the building industry about the poor homeowner who couldn't afford it. If you bought your house in the mid-1980s, you made a handsome profit if you sold it by 1990. That was a fact of life. If the purpose of this bill is to try to get new homeowners into the housing market, we submit this isn't the way to do it.

It's estimated roughly that the city of Niagara Falls would lose approximately \$300,000 per year if these costs are now shifted to the city's tax base. Obviously, that's less with the 10% elimination. The city of Niagara Falls is very close to its various industries as well as to the taxpayer. There's a dialogue between the development industry and the city. The proof of that is that the development industry had concerns. We sat down with them in the early 1990s and we resolved their concerns. I think they initially appealed to the OMB and they withdrew their appeal, so our bylaw did not have to go through an OMB hearing.

In 1995, and this was in response to the local building industry and to assist new home purchasers, the city of Niagara Falls implemented its housing start rebate program and set aside \$200,000. At the end of my brief there's a copy of the front page of that. I phoned around to my colleagues and no one was doing it; we had to devise our own ground rules. We had \$200,000 of the taxpayers' money we had to give to new home buyers. Seventy-five people out of 100 possible qualified purchasers took advantage of that and the city spent taxpayers' dollars of \$150,000 to get the building industry back on its feet.

The politicians would have been accountable at the polls for this. They took this risk and no one lost his or her seat as a result of that, the best we can determine; only one incumbent lost his seat, probably for another reason. The point is that there was a local problem, a local concern by the building industry. The building industry approached the local politicians. The local politicians came up with a housing rebate program; \$200,000 is not an insignificant amount for the city of Niagara Falls.

As a result, 75 new homeowners came to the city of Niagara Falls. There were no threats, no coercion, no legal action. The city did it in response to what it perceived to be a need. We're also suggesting, very respectfully, likewise with this bill: Don't tamper with something that's working relatively well. There has to be the local flexibility, the local initiative to take care of concerns.

This housing rebate program isn't something theoretical. It was cold hard cash. It worked well. It was very successful. The builders were very happy. The new home purchasers were very happy.

I have another source: The Niagara Falls Review as well.

The development charge on a single-family home in the city of Niagara Falls is \$3,451. It's probably the lowest of any development charge, if you are to compare to a southern tier municipality in the GTA. If the city of Vaughan — there's another article — I guess both regional and local development charges are up to \$18,000 or \$19,000. Even with the regional development charge, which is about \$1,900 added to our \$3,400, we are so low. To now say across the province that you have to deduct 30% cost of soft services would hurt this city.

What we're suggesting instead is that rather than talk about a reduction of costs of services — the costs are relatively the same in Toronto as they are in Niagara Falls; maybe some variation in the labour rates. The fact of the matter is that if we'd been very reasonable and responsible in determining what our development charges are and if the development industry says other municipalities haven't, we submit it's unfair now to penalize the good municipalities, if you will, with this approach.

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What we're recommending is that rather than a 30% reduction of the cost of soft services, if there is to be a reduction there be a 30% reduction on the development charge itself. We submit this would be fair because each municipality has had to go through the exercise, has had to have possibly a trial by fire if its numbers were wrong, and the development industry is very vigilant on that. So if there is to be any reduction, if there is to be this co-payment, we submit it's fair and has a local flexibility if you were to reduce the approved development charge now, as opposed to the reduction in the cost of the services, because that would penalize municipalities such as the city which has kept its development charges low.

Those are my submissions. I thank you for the opportunity to present them. Alderman Norm Puttick from the city council is here and if there is time left over he has asked if he could address the committee.

The Chair: Perhaps the time to do that would be right now, before our questions.

Mr Norm Puttick: I'm delighted to hear that the government —

The Chair: I should let you know that there are nine minutes remaining in the presentation, if you want to leave time for questions.

Mr Puttick: I'll take about a minute and a half. Mr Kallio and the staff prepared this brief. I just want to let you know two things: I sit on the large urban committee of AMO. I also sit on the social services of AMO. I've been an alderman for 28 years and I have never had anything that kept me awake politically — I'm so frustrated with this system and the way this government operates. I ran in 1990 with Mike Harris. I'm retired for seven years. I sit on the seniors' board in our area and the subject that comes up all the time is, "What is this government doing?"

In regard to development charges, and I've got to say this, we all feel it's just a political payback to the developers because there's no way of getting this money back to the purchaser. What should happen is, if you were going ahead with these development charges, let the municipalities receive the 100% of the development charges as they are now in their separate municipalities, and at the time of the building permit let the municipality rebate that portion to the home buyer so you're sure that it's going, as you say, to develop jobs.

Let me just end on this: One of the biggest problems we have in our area — we just received a communication yesterday from our MPP who has left on holidays — is communication. We have asked his position on this and his position is: He agrees with the government. The MPPs agree with the government about what goes on in Toronto, but that's another matter. There's a lack of the communication we had with previous governments.

When they did anything, they talked to our senior staff. If it was important, they talked to fellows like me who have been around 28 years. But what seems to be happening, and I'm speaking politically now, is people get elected and they go along with the party line and they say, "What does that little grey-haired guy down there know about it?"

I'll tell you I'm going to sleep well tonight. I'm retired. I'm very active. I'm very intense. I know politics. I know how it works and you can go back and rest assured that I'll drop a personal note to Mr Leach for backing down on this because this was the worst piece of legislation. I write a weekly column in a paper in the city and I had written two articles and ended up that this is nothing but a payback and I'm glad you withdrew from it.

Mr Ernie Hardeman (Oxford): Thank you very much for the presentation. First of all, I just want to clarify that the cost of the studies is in fact recoverable through the development charges bylaw. The only thing that's not recoverable is the cost of appeals. If someone appeals it, you have to take that bylaw to the appeal and it would not be recoverable.

In your presentation, you talked of doing studies for the new bylaw and obviously the studies have to be done for the old bylaw too because there was a requirement that it must be done every five years. That's not necessarily an added cost since it has to be redone any way.

Mr Kallio: Excuse me, sir.

Mr Hardeman: If I could, I want to focus on the issue of accountability. I think we all recognize the price of development charges is in the price of a house, whether the savings are passed through or whether they're not. I think everyone would accept that at present a new home buyer pays for the development charges that are in the price of that house.

I have some concern that the municipalities could make the decision of how much they shall be based on — in fact they're not accountable to the people who are going to pay that because they're not taxpayers yet and they could be very accountable.

Going to your development charges, you suggested that you set a rate. You then decided the development industry didn't like that rate so you negotiated it down to

where both sides were happy. I would just like to know if in that process you lowered the level of service or whether you were too high to start with and it was the developers who forced the issue down on behalf of the new home buyers.

Mr Kallio: If I could deal with that point first, if you've ever seen these economists' or consultants' reports, it's not a science, it's not precise, so to speak; there's some opinion, some conjecture. It's like a land appraisal: one appraiser says X, the other says Y. Neither is right or wrong, but you have to test their methodology, you have to test their variables, that sort of thing.

It's not that our development charge was too high or too low — the development industry probably wouldn't be happy unless it was a dollar — it was the give and take. They have to look. They get to see the studies, we get to see their studies, that sort of thing, then you have to make a decision. Are we reasonable? Are we within the ballpark? It's like anything else; it's like litigation. You don't know what the court's going to do. That's why most lawsuits are settled. It's always the big grey area.

If I could deal with your first point, every five years you have to do these studies. My point was that we are doing these studies. The safeguards are there to further tinker with that. It doesn't make any sense. That was my point, to now have this 30% after all is done and it's a straight subsidy to the development industry.

Mr John Gerretsen (Kingston and The Islands): First, let me congratulate you on the housing start rebate program. I think it's a tremendously innovative municipal program and obviously it's been very well received in your area.

What I would like your comment on is what I perceive to be a great inconsistency. Last week the government came out with much fanfare with the notion that it's going to give a new Municipal Act in which municipalities will be able to do all those things that they should as a natural person be able to do, and a lot of the old methods that will prevent them from doing that are going to be done away with. Yet to me that seems totally inconsistent with telling municipalities in this Development Charges Act what they can or cannot negotiate with the developers in their particular area and depending upon their particular circumstance.

Do you see any inconsistency there in those two positions? Do you have any further comments on it?

Mr Kallio: Primarily in southern Ontario where the development occurs it's through lots of years of experience. People like Mr Iorfida who has worked in the development industry for over 30 years know what the cost is for a length of pipe; he can tell you what a sewer costs, a storm sewer, whatever. These are hard figures. A municipality can work through these things.

The development industry isn't happy with any development charge and that's a perfectly valid point of view, I submit. They want the least amount of charges and they want the most amount of profit and that's fine, but there has to be this balance. I haven't seen this new act; I've heard about this natural person act.

There are things in the Municipal Act that do not make sense; there are some that do make sense. But with respect to the development industry, we don't want to go

on and on. The fact of the matter is there has to be a balance there. To take something that seems to be in balance and add another component, a significant one, will throw it out of whack, will cause it to wobble, and that's not going to help the development industry because municipalities have ways of coping.

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Whether there's an inconsistency or not, I don't know, but the fact of the matter is that we believe it's working well. There are sufficient safeguards. You don't have to take our word for it that we say it's working well; there are sufficient safeguards. The OMB is no friend of the municipality or the developer; they're a dispassionate third body. They'll look at the numbers. They have a lot of experience dealing with consultants and the numbers. They'll look at that. Either we're in the ballpark or we're not and we're quite prepared to be put to that test.

Mr Pouliot: Norm, it's a renewed pleasure indeed. We consulted when we had the opportunity and we certainly keep a very good memory of our exchange. Mind you, this time, courtesy of some electorate, we find ourselves being the third party and my job is a lot easier. So it's a renewed pleasure.

The rebate program is due to expire next week, on April 1, is it not?

Mr Kallio: No, it was in 1995. It expired in 1996.

Mr Pouliot: It has expired. Given this legislation and also given what is to be expected — you've mentioned a mega-week — candidly, would you be able to offer the same program under conditions that are about to happen?

Mr Kallio: It's a matter of dollars and cents. Obviously, I don't speak for city council, but city council has its eye very close to the bottom line and we are driven by what the taxpayer can afford, and that's not a fiction.

Mr Pouliot: In your presentation you've mentioned with some pride — justifiably so — that the city went for six consecutive years without a tax increase and in some cases a small decrease. I will get political, if I may: With all the downloading — because that's what it is; there's nothing which is revenue-neutral here; let's make no mistake about it — the Premier has mentioned that by the year 2000 municipalities should be able to enact a 10% decrease in municipal taxes. The people you represent, Norm, are very much aware of what the Premier has said and they will be expecting a 10% decrease in general purpose on their tax bill.

As you look at your crystal ball, will you will be able to deliver, to satisfy, to fill those expectations?

Mr Puttick: Could I just take 10 seconds? I'm glad this question came up. The city of Niagara Falls just completed its sixth year without a tax increase, close to \$2 million out of senior payroll. We were the first municipality not to have a deputy fire chief. Every meeting I went to — AMO, Good Roads — asked, "How did you do it?" and so on. Number one, because we have good staff; they did that.

But talking of downloading, the city of Niagara Falls and the region have a signed contract by the provincial government to rebuild a \$16-million bridge at Thorold Stone Road over the Queen Elizabeth highway. All the property was purchased for the cloverleafs, developers went ahead and built subdivisions and stores, and guess

what? Mike Harris said, "No, we're not going to pay for it."

Subsequently, and I'm coming to a point here, the finance minister of Canada, Paul Martin, said: "There will be no infrastructure money. We don't have it." Now they have an infrastructure program and what I'm doing locally and trying to alert people to — I'm going to be at a meeting at the region this afternoon — is: "Guess what? The provincial government is going to come down and say: 'We're going to build your bridge. You pay one third, the province pays one third and so on.'" What I'm saying is, you're downloading, downloading, downloading and penalizing our municipality which had been efficient long before Mr Harris came on the scene.

I've done research on this. I've talked to a lot of people. I've talked to the people at AMO who are good staff, do all the work for your chairman, Mr Mundell, and there's one conclusion, and we were told this Friday. You have no plan on anything you do, but there is a secondary plan with \$2.5 billion to throw out if plan 1 doesn't go. I say that to you very, very constructively because, as an elected person, all these announcements come out and nobody has a plan. If they don't honour the \$16-million signed pledge to build a bridge, how can we believe the government on anything else they do?

I know I'm a little bit off the subject. I know I'm a little frustrated as an elected person. But start listening to the people who are there, not the local politicians. Listen to our staff who have had six consecutive no tax increases. We have a casino, we're up 117% in building permits and you people sit down there and don't want to talk to us. We can show you how to run a government.

The Chair: Thank you very much with that. We appreciate your taking the time this morning to come before us.

Mr Gerretsen: I think we should hear more from this gentleman. It makes a lot of sense. Maybe something will get through.

REGIONAL MUNICIPALITY OF NIAGARA

The Chair: We now welcome the delegation from the region of Niagara, if you could come forward and introduce yourselves. Please begin.

Mrs Jill Hildreth: I am Jill Hildreth, and I am a regional councillor from the town of Lincoln in the regional municipality of Niagara and I am also chairman of the Niagara regional development charges committee. I have with me this morning Mr Shafee Bacchus, who is the assistant director of finance and my very best right-hand man. He's the gentleman with all the detailed knowledge. I'd just like to give you an overview of some problems that we have in Niagara, and then I am going to throw the ball to Mr Bacchus and he will continue to carry it.

I am very pleased to have the opportunity to address you this morning on behalf of the development charges committee of the council of regional Niagara. Niagara region is a very diverse area of Ontario and quite unique in its infrastructure needs in that it is surrounded on three sides by water and has to cope with the geographic challenges imposed upon it by the Niagara Escarpment.

As a result of those facts we are faced with a total of 15 waste water treatment systems in Niagara and seven water treatment systems which include their accompanying pumping stations and miles of pipe. This represents only a portion of those areas where development charges will need to be spent.

With this in mind, I would like to assure you that we as a council have always attempted to meet the challenges of growth-related costs in a fair and equitable manner, not only for the developers involved, but also by attempting to reduce the costs to the existing residents and the future taxpayers by having those developers pay their fair share.

This has been quite an exercise, necessitating not only development charges studies in order to clearly delineate the growth-related components of our proposed infrastructure, but also included consultations with those most greatly affected by our decisions, members of the development industry themselves.

We have just recently received our updated development charges study, prepared for us by Hamson Consulting Ltd of Toronto and will be presenting those results to regional council within the next few weeks. We will also be recommending to council that members of the development community be invited to participate in our deliberations on the new proposed charges as they had been asked to previously.

Niagara is a most beautiful area of Ontario but has throughout the last decade suffered greatly from a stagnant economy as well as plant closures. With this as a background, we have always attempted to keep our development charges very reasonable in order to try to encourage development here.

We have never imposed development charges on industry or commerce in order to encourage them to locate in Niagara if possible. We are very pleased that the Premier has decided to withdraw the 10% charge that we would have to shoulder on the backs of our taxpayers for the hard services, because when you're talking development charges in Niagara for the region, we are talking hard services pretty well 100%.

I will now leave it to our very capable Mr Shafee Bacchus to present to you the detailed concerns of regional Niagara concerning Bill 98.

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Mr Shafee Bacchus: Madam Chair and members of the committee, we are submitting this brief on behalf of the regional municipality of Niagara. As we understand, in 1996 Bill 98 was introduced in the Ontario Legislature. The bill is intended to replace the existing Development Charges Act of Ontario and the regulations thereunder.

We have reviewed the bill and are concerned that certain proposals will severely impact on the current financial status and infrastructure programs of the region of Niagara and therefore would suggest that in those instances the proposal to change the existing act be reconsidered.

The minister's announcement yesterday kind of knocked some of the wind out of our sails in the first part of our brief, but I'll say them anyway, just to re-emphasize our concern that we don't agree with the

copayment clauses that are included in the bill. If you will bear with me, I will read them off anyway.

We acknowledge the broad goals of the province with the introduction of this bill and we understand that they are to improve fairness, reduce obstacles to growth and development, change incentive structure, reduce charges, continue the ability to pay for infrastructure and increase municipal accountability.

With few exceptions, these goals are no different from those enunciated when the existing Development Charges Act came into being in 1989. The act was the vehicle to bring about change to an environment which was confusing to both municipalities and developers alike.

The Development Charges Act of 1989 was not perfect but it introduced standard practices to the municipalities regarding the extent of information compiled and disclosed and how the charges are to be developed, kept and expended.

Today, as always, municipalities are faced with the challenge of providing services in a consistent manner to new development without impacting the existing residences and thus the goal of fairness. This challenge has meant that most municipalities, including Niagara, are unable to adopt a full-cost recovery approach for any project related to growth. In Niagara, development charges represent approximately 20% of the cost of infrastructure related to growth. In other words, 80% of the costs related to growth at the regional level is borne by the existing taxpayers or transferred to the existing taxpayers.

Bill 98 as proposed seeks to guarantee this inability with the monetary copayments of 10% and 30%. In other words, it guarantees that those taxpayers who are satisfied with their existing services must subsidize through increased taxes and user rates new infrastructure because of the growth and there is no evidence that the development industry will pass on this reduction on the new house buyers, nor does Bill 98 attempt to ensure this.

In a recent study conducted for the region, new growth-related infrastructure costs over the next 10 years, 1996 to 2007, will amount to approximately \$131.6 million. Assuming the copayments as proposed, this would mean that approximately \$13.8 million will have to be absorbed in Niagara's general tax levy and user charges because of the proposed changes. In our view, this is unreasonable and at best an arbitrary decision. It is critical that the new costs of growth are paid for in a fair and reasonable manner by the development which causes the growth and not by the existing residents.

The decision to fund must rest with the municipality and municipalities must be allowed to fund growth requirements from whatever source and in whatever amounts, limited only by those services prescribed under the act. This is essential for good financial planning and ensures the needed services are in place as required. Similarly, it is fundamental to the recovery of growth-related costs that all of the costs be identified and used in calculating a development charge.

The proposal under section 5(6) and 5(1)7 of Bill 98 would arbitrarily reduce these costs and pass them through to existing taxpayers. Reducing these costs by 10% and 30% before the development charge can be cal-

culated moves away from the principle of fairness and equity, in particular for hard services which represent the highest levels of expenditures for Niagara and other municipalities around Ontario. We have similar concerns with sections 36 and 64, which propose to limit the amounts to be spent from development charge reserves to the 10% and 30% copayments. We would emphasize that new growth must continue to pay for itself and should not be compromised with cofunding as proposed in Bill 98.

We would therefore propose that the provisions in section 5(6) and 5(1)7 be removed so that there are no reductions to the identified growth-related costs prior to and after calculating the necessary development charges. At this point, we acknowledge that the minister has suggested that the 10% copayment would be removed and we are pleased with that announcement.

We are also concerned with the proposal in section 5(1)4 whereby the need for increased service to development must be reduced by uncommitted excess capacity. Municipalities typically do not construct only to meet existing needs. Sensible planning requires the anticipation of future growth to ensure satisfactory accommodation of those who may come in the future. It does so by upfronting those costs with the intention that future growth which makes use of that oversizing will repay the existing taxpayers through development charges. The proposal in section 5(1)4 grants a free ride and is not consistent with good public works, financial or planning policies.

It is therefore proposed that section 5(1)4 be removed and instead a provision be made to allow for the inclusion of all oversized costs in the calculation of development charges.

Section 5(1)3 ignores the fact that the need for service levels in some areas of service — water, waste water and transportation — are dictated to a large extent by the province and may exclude increases which exceed the previous 10-year average. Therefore, to require 10-year average service levels as the criterion for determining costs is unreasonable in some cases when the need is mandated and outside of the control of the municipality. As well, if the 10-year average is less than what is required for growth today, this effectively removes 100% cost recovery in calculating the development charge. It is proposed that the service level be tied to the need of the proposed developments consistent with provincial and municipal policies.

We are pleased that studies connected with any of the development charge calculations can be included as part of the capital costs, and this is as it should be. That is included in section 5(3)5. However, we question the necessity to require an examination of the "long-term operating costs for capital infrastructure required for the service" as proposed under 10(2)(c). Inasmuch as growth-related capital costs are easily identified, many of these would be serviced through existing plants. Therefore, it would be arbitrary at best to attempt to quantify the operating cost impact in such cases. This only adds to the costs of calculating development charges and, subsequently, given 5(3)5, the charge itself. It's surprising that the development industry doesn't see anything wrong with

this because now we're adding to the charge with this inclusion of an operating study which can be included in calculating the cost of development charges.

It is therefore proposed that section 10(4) be amended to remove the requirement for a background study on operating costs.

We have attached to this brief an executive summary of points made by the regional treasurers of Ontario and, as I understand, this either has been submitted to the minister or will be submitted to the minister in the very near future. We're in complete support of those points. I am not entirely prepared to discuss all of the points raised in that executive summary, but I'll attempt to if there's a need to.

Niagara will not be affected in the same manner in all respects as suggested in the executive summary from the regional treasurers. For example, we don't support hospitals at the regional government level from our financial plan. However, we can appreciate the impact Bill 98 will have on those regions where these services are concerned and therefore are in full support of the proposed amendments.

In conclusion, we respectfully suggest that your committee review our concerns and recommend the necessary changes to the bill prior to its enactment.

I'd like to thank you for this opportunity and for giving the region of Niagara an opportunity to present this brief.

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The Chair: Thank you very much. Are you ready for questions and answers? We'll begin with the Liberal caucus and you'll have about four and a half minutes for questions and answers both.

Mr Mario Sergio (Yorkview): Thank you for coming down and making a presentation to our committee today. We have heard practically the same things since we started last Monday hearing deputations. We had the developer side and we have the government side, such as yourself. Practically, I could say you are repeating what other members have been saying, including yesterday, for example, in the city of Ottawa.

The bill as it is presented wants to have legislation which imposes on municipalities all over Ontario how to run their business practically and we have been hearing that the municipalities should have that flexibility to run their business according to their needs. This is what you have been saying, this is what I believe the previous presenter was saying, and we are saying if the municipalities have been doing such a good job, why do we have to change so drastically the legislation as it is now?

On Monday the minister himself said that the price of homes should come down by \$5,000. With what you have said with respect to subsection 5(6) and paragraph 5(1)7, how would you rebate that to a homeowner? How could we pass along that reduction?

Mr Bacchus: The region of Niagara doesn't have, as the previous speaker has said, a rebate program in development charges. We have one of the lowest development charges among regions, and in fact the region's charge is lower than all of the municipalities' charges in and around Niagara. I'll ask the council representative to address the question of a rebate program, but from my

experience at the region we don't perceive a rebate program in the future for home buyers, because our charge is so low for one thing. We're only recovering about 20% of our growth-related costs.

Mr Sergio: I don't mean necessarily initiating some rebate programs. I mean with respect to Bill 98, according to the minister, if the charges were to be reduced or eliminated, the price of a house should come down by \$5,000. We don't agree with that. But if that were the case, how can you as a municipality pass on to that prospective new home buyer that reduction of \$5,000, \$7,000, \$3,000, whatever?

Mr Bacchus: I don't think it's up to the municipality to pass that on. It's up to the developer to pass that on to reduce the prices. The market forces will determine that. I don't see how the region will do that.

Mr Sergio: Hazel McCallion says unless he legislates the price of homes, you can do it.

Another question from my associate here.

Mr Gerretsen: Just to follow up, I believe you were here for the earlier presentation where it was suggested that if we want to make sure that some of this money ends up back in the pockets of the home buyers, why don't we just have the old system stay in place and why doesn't the government just legislate that a municipality has to turn back 25% or 30% of the actual money that was paid by the developer for development charges? There could be legislation that once the home buyer is in or once the house is being bought, that could be given directly to the buyer. What do you make of that kind of suggestion? I think it's an intriguing one.

Mrs Hildreth: I would agree with you, it's intriguing. At the regional level we don't even collect the development charges ourselves. The municipalities do that and, on occasion, they slip up and we have some quite interesting meetings.

Mr Gerretsen: You're not a local council, I take it?
Mrs Hildreth: No, we're not local. I really do believe, though, that giving a rebate on a charge that is so minute in its impact doesn't benefit anyone.

The Chair: We'll move to the Liberal caucus — sorry, the NDP caucus. I apologize.

Mr Pouliot: The point is well taken, Chair.

Mr Sergio: He hasn't joined us yet.

Mr Pouliot: My colleague Mr Sergio is quite right vis-à-vis Bill 98. The presenters have become "somewhat predictable" by virtue of whom they represent. We have heard a lot of opposition. Some were bold and went as far as to say it was la payola, that golf buddies had to be rewarded, that you treat your friends a little better than you treat others, that when all is said and done, you are seduced by the message and the minister decrees your number has come up: "Congratulations, you've won the lottery."

Another sentiment, and I need your help, that has emerged is the following. Many presenters do not believe that the savings will be passed along to the consumer. In fact, few presenters believe that all the savings would be passed along to the consumer. They believe that the developer — and they go as far as imputing motives. They have immunity here.

I have a question: the downloading, the transfer of who pays for what; not who does what but who pays for what. It's going to cost the Niagara region, I think I read somewhere, about \$73 million, and then you add these costs to it, and then you are expected to enact a 10% decrease in property taxes by the year 2000. Can you help me? Where are you going to take the money?

Mrs Hildreth: I don't think that solution is even rational. It's not going to happen. I can't see it happening.

Mr Pouliot: I share your sentiment. I too have searched long and hard to find the costs associated with what's coming down the pipe. One day I hear it's \$900 million in a contingency fund; two weeks after I hear now it's 2.3 or 2.5. I represent a riding that goes all the way to Hudson Bay. We don't even know the cost of policing, who is going to pick up the 50% of the drugs for the welfare recipients etc. Those people, that lot there, the manner of humanity that the government has attracted, would like us to believe we're going to get a 10% decrease in our property taxes because this is all revenue-neutral. Well, it's not revenue-neutral. They're gunning for \$3 billion between that and education, and I want to wish you well.

Mrs Hildreth: Sir, I feel that the government is well intentioned, but they seem to have blinders on one fact: reducing the debt. I think most members and most citizens of Ontario would agree with that. By doing so, they're dropping boulders into the pond that is Ontario. I think they're forgetting that when you drop boulders into a pond, waves are created. I think that's the problem we're faced with: What's going to happen when those waves hit the boundaries of the pond?

Mr Hardeman: Thank you very much for your presentation. Going to the development charges in the region of Niagara, I think in your presentation and in previous presentations you said it was \$1,700 per lot.

Mr Bacchus: Some \$1,900 for single family.

Mr Hardeman: So \$1,900 per lot, and your study shows you could charge considerably more.

Mr Bacchus: At the time the present rate was suggested to council, our study showed that we should have been at around \$10,000 for a single family. It was a decision — I think Mr Sheehan was on our public advisory committee as well. We had an excellent communication strategy developed and by listening to the developers as well as the community at large, we reduced that charge to substantially less.

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Mr Hardeman: Is it possible to suggest, then, or appropriate to suggest that the existing taxpayers are picking up the difference?

Mr Bacchus: Yes, 80%.

Mr Hardeman: So your existing taxpayers are presently picking up 80% of the cost of that growth.

Mr Bacchus: Growth-related, yes.

Mr Hardeman: Using that assumption, under the new proposal it would become quite simple for Niagara to just increase the 19% to 22% to make up what the 30% is, and then the existing taxpayers would pay exactly the same as they presently are paying, which of course is based on the decision of your local councillors. So there

would be no impact on the taxpayers, either the home buyers or the existing taxpayers.

Mr Bacchus: For example, if the copayment charges remain in the bill, the \$13 million which we estimate would have to be transferred to or absorbed by the existing taxpayers which is not being done right now, I imagine that would represent, to get your question earlier, about a 14% increase in the tax levy.

Mr Hardeman: I want to get it perfectly clear in my mind. You presently have the existing taxpayers paying 80% of the cost to service new development. The proposal before us suggests that that should be on hard services, and the proposal is 10%; the minister has said he's going to remove that 10% requirement, but on the other services it would be 30%. That's 50% less than the taxpayers in Niagara are presently being asked to pick up. So where is your concern that —

Mrs Hildreth: But, sir, that is a local decision to do that, it's not a legislated decision. That's a local decision.

Mr Hardeman: But the local decision between the two pieces of legislation would be just to change the numbers and your taxpayers would be impacted in exactly the same manner as they presently are.

Mr Bacchus: No, I don't think they'll be impacted in the same manner. Right now, as I mentioned, we're picking up 80%. Under the bill we're being asked to pick up an additional amount over and above what we are already transferring to them.

Mr Hardeman: Using that percentage, would you speak positively to a suggestion that the 80% be used as part of the copayment, that in municipalities where they charge less than what the studies showed, that would be the payment as opposed to having to put cash into the fund?

Mr Bacchus: I'm not sure of your question. Maybe you can rephrase it.

Mr Hardeman: Not using the 80%, say it was 30% that the taxpayer was presently picking up and 70% was actually in the development charge. If the legislation allowed that instead of having to put 30% cash in, you could use that 30% difference between what was allowed and what you were charging as the copayment, would that solve your concerns?

Mr Bacchus: It would allay it to some extent, but not completely.

The Chair: We'll have to stop at that point. Thank you very much for taking the time to come before us with your suggestions. They're appreciated.

METRONTARIO GROUP

The Chair: We'd now like to hear from the representative from Metrontario, Mr Mondell. Welcome.

Mr Paul Mondell: Thank you, Madam Chair, members of the committee. Good morning. My name is Paul Mondell. I am here on behalf of the Metrontario Group. The Metrontario Group is a group of privately owned companies that I'm proud to say celebrated their 50th anniversary in 1996. During that time we have been developing residential communities and building homes throughout the greater Toronto area. We currently have projects spanning from Burlington through to Oshawa, as well as some significant holdings in the United States.

Thank you for the opportunity to address you this morning and share some of my thoughts with you on an issue that is critical to our company and to our industry.

Let me first say that we believe growth should pay for itself. The question I keep asking is, why are we going through this complicated process? To quote Mr Hardeman from a few weeks ago: "Something went wrong. Growth is not just paying for growth but is paying for much more than its fair share." The Development Charges Act was intended to cover the costs of growth-related services that are needed. It is our perception that in addition to the services that are needed, many municipalities are charging for a share of some non-growth services and a share of services that are not needed.

That is why we have seen many development charges that have doubled and tripled since the Development Charges Act was first introduced. The Development Charges Act was supposed to provide greater consistency and accountability in the way municipalities used development charge dollars. The effect has been quite different.

The bill that's before you is an attempt by this government not only to recognize the importance of our industry and the economic benefits associated with having a strong and healthy development and housing industry, but also a return to a balance between the needs of a municipality and the need for growth; the need to create affordable housing and the need to provide new services; the need to remove barriers to economic growth and job creation.

The proposed legislation is not about developers and municipalities winning and losing. That, unfortunately, in my opinion has been how this has been portrayed. It's about returning to the original principles of fairness and accountability. We have to stop building gold-plated monuments and return to building facilities that people truly need.

Let me deal with a couple of items that I think are fundamental, and these are the issues that Bill 98 addresses. The first is the control of the level of service and the second is public accountability.

In my submission, the level of service is controlled in three ways:

(1) What municipalities can include in their charge. The new legislation reduces the scope of services for which municipalities may impose development charges, including such things as art galleries, performing arts centres, tourism facilities, city halls and excessive parkland acquisition.

(2) Applying an average level of service test over the previous 10 years versus the former peak level of service test, or cherry-picking, as I would refer to it.

(3) Copayment. The new legislation will still give municipalities the capability and the flexibility to recover costs on a wide variety of services and facilities needed by new residents and new businesses.

We believe that if a municipality can pass on 100% of the cost of soft services, there is no incentive for fiscal responsibility. Unfortunately, we have seen far too many abuses of the present system. It is far too easy to justify a project to the existing taxpayer as a development-charges-funded project if there are no tax dollars going to

support that project. Our industry supports copayment as fundamental to the spirit of Bill 98. There is, in my opinion, no other mechanism that will require municipalities to cut their costs, reduce excessive level of service standards and examine alternative financing options. We believe these three requirements will effectively control the level of service a municipality is willing to impose on new growth.

The second point is accountability. The new legislation provides for greater transparency, more detailed accounting of development charges revenues and expenditures and requires municipalities to analyse the long-term capital and operating costs associated with facilities intended to be financed from development charges.

One point that I feel is very important here is that this is going to benefit not only future taxpayers — because this is what a lot of this is about, people who don't yet have a vote in these municipalities — but this is also going to benefit existing taxpayers.

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Municipalities will be required to examine the future costs associated with new facilities, not just the initial capital expenditures. Again, it was far too easy for municipalities to simply say, "These are capital dollars that are being paid for by development charges." There was no indication or any examination of what the long-term operating and maintenance costs of these facilities were going to be, and everybody was going to be saddled with those costs, not just the future taxpayer. I would submit to you that this will undoubtedly provide the sober second thought that is needed before any money is spent and projects are advanced.

Why are these changes necessary? While the existing legislation was full of good intentions, it did not provide the accountability that was expected. I have, unfortunately, some very bitter experience in this matter.

Development charges have continued to escalate while most other costs have been reduced since 1991. I can tell you that most of the costs I'm associated with, and land values, have fallen by as much as 30% to 40%, while in most municipalities development charges have risen in the same period by 10% or more.

Municipalities have proposed development charges for non-residential uses in excess of what the land is worth. Projects, and I have one of them, have been put on hold because the development charges and servicing costs are more than the land is worth.

We've heard a lot of discussion this morning about rebates and whether cost savings are going to be passed down to the homeowner. I'd like to suggest to you that I've got a situation where I can't bring my land to the market. There's no money in it. When you've got, in some municipalities, development charges close to 40% of the land value and then you add on to that your servicing cost, I'm afraid those projects aren't going to go ahead.

I would suggest to you that the projects that could be brought to the market and should be brought to the market will do more to keep prices down than talking about rebates, because competition creates that environment. Some of these examples I've given you and some

of the development charges bylaws are not, I would suggest, how you encourage economic growth and prosperity in Ontario.

I would like to briefly point out one of the problems in the legislation. Notwithstanding the many positive changes contained in the new legislation, there is a concern by our industry specifically with respect to transit. The removal of provincial funding to transit is going to place a huge financial burden on municipalities. If municipalities are allowed to pass on their increased costs to the development charge, the fear is that any savings realized by the changes in this legislation, including those I've already discussed, will be more than offset by the increase in transit. A special case can be made for transit, since it does serve the population as a whole and in many cases crosses municipal boundaries to provide a more cost-efficient service. We are suggesting that transit be funded from a combination of development charges, user fees and the tax base.

In conclusion, we would like to commend the government for the leadership they have shown in this important matter. We feel that Bill 98 provides the balance between the interests of the development industry and those of the municipalities. Municipalities will continue to provide the services that are needed in a cost-efficient way that is fair to everybody.

Thank you for the opportunity to address the committee this morning. I'd be glad to answer any questions.

Mr Pouliot: I thank you, Mr Mondell. You speak with conviction. I need to tap your expertise. I need your help. You have mentioned that development charges at times go beyond their intent, if you wish. Not only do they subsidize growth or pay for growth, but they go beyond. I took it that you were talking precisely about hardware and software, that development charges were used to go to a VAT or to a general fund of sorts, and then the council would dole out whatever they wish.

Let me give you an example and you tell me if I'm wrong. This is where I need your help, because I come from the premise that when I buy a house, I also buy a little bit of the museum, part of the library — oh, yes, you've inspired me: transit. Your presentation, I trust, was very consistent, but then you were seduced by the lure; you threw in transit to sell the property and the true Mondell came out, and that's okay, that's fair game.

What about if some of the development charges are used to buy a grader? The grader is getting a little long so the municipality needs a new grader, \$160,000 or \$180,000 or whatever. Should they use the grader only for that portion that is being developed, only for that section, that subdivision, or would you think it would be wise to use the grader for as long as the roads will take it? Don't you think that is good management? What I am saying is that it's very difficult to differentiate between development services in a dedicated way and the soft services which are also a development charge, one could argue, because they make up the community. We're talking about location, location, location. I wouldn't buy a small house without trees, because I love trees. Most people do. I would prefer one with trees, so the cost of planting trees has to be incorporated in it, don't you think?

Mr Mondell: There are many questions there. Let me see if I can work my way through it.

With respect to the grader, I would suggest you don't need to buy the grader. You could probably lease it. It would be a lot cheaper.

Let's talk about museums and the softest of the soft services, as I like to call them. Let me use an example of a situation that I was involved in in a municipality in the GTA that had a very lovely performing arts centre, if I could use that example, rather than a museum; probably about 500 seats. When you looked at the projections in the background studies, and we did take a very close look at it, the facility was operating at far less than capacity. Certainly when a large-ticket item would come to town, it would likely sell out, but the vast majority of the days, that facility sat empty. The municipality suggested, though, that since their population was projected to double over the 10-year or 20-year period, therefore they needed twice as many seats in a facility that currently wasn't being utilized to begin with. We seriously questioned whether that facility was truly needed and should be a growth-related cost.

There are many examples I would give you that are related to growth. That one and your museum, I would suggest to you, are not, and for another reason as well. We're talking about affordability.

Let me give you another example of a community that is very well off, I would suggest, and has experienced a healthy growth rate over the last number of years. That's the town of Oakville, where I'm very active. I think most people would suggest that it's a very affluent community. In my latest project out there, 60% of the buyers who are buying houses are first-time home buyers, less than \$200,000. Your museums, your performing arts centres, with all due respect, sir, are not helping create that affordability. I believe those people's first priority should be getting into the house and getting housed. Then let them, as a current taxpayer with a real vote, decide collectively whether that performing arts centre or whether that museum is adequate to their needs.

I would make the same suggestion on the non-residential side. I don't believe a business that wants to come into a community should be saddled with those kinds of costs if there is no needs/cost-benefit analysis they can then attribute.

I think those are very, very fundamental issues. I think this bill covers off some of those things. There are lots of other examples we can talk about. I believe recreation centres, parks and those types of things that have a direct relationship to a community and the way people live are much different than the examples I just gave you of performing arts centres and museums.

I'm not sure I answered your question, but I think municipalities looked at the development charges legislation and said, "This allows us to buy the new grader and it allows us to buy the new dozer and the new pickup truck." I don't believe a lot of it was necessary.

Mr Pouliot: So you feel that it was a levy and it was done at random and whatever the market will bear?

Mr Mondell: Absolutely.

Mr Doug Galt (Northumberland): Thank you for your presentation. It was a most interesting one. Having

listened to you and listened to the ones previously and for the last two days coming from both sides, it sounds like maybe we're coming in the middle, and if that's the case, maybe we've hit it not too bad at all. You did suggest a problem, and we'd like to see that one addressed. Some of the municipalities have expressed some others. You also talked about 40% of the cost of land being a development charge, and that has to be a detriment to getting on with development.

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Yesterday one of the presenters indicated that for a long period of time they had been collecting development charges. Part of that was to build a bridge. Lo and behold, a few years later the bridge no longer appeared on the list of reasons for collecting development charges. I have a few names for collection of money under those pretences. Do you have any suggestions on how that might be prevented in the future and be a little more accountable and honest and upfront with those people buying those homes?

Mr Mondell: I believe you've hit on a very interesting issue. I think we've seen that in many cases, that suddenly projects where money was collected either under the old lot levy regime or development charges no longer appear. I'm not, I guess, as up on some of the technical issues in the new proposed legislation as I might be, but as I understand the proposed legislation, getting into more technical discussion, reserve funds are going to have to be created for specific items. If you're collecting money for recreation centres or for parks, those moneys will ultimately have to be spent on those items. You cannot take the money you collected from parks and spend it on roads. Unfortunately, part of the problem with the last legislation is that everything was a moving target.

I sat in a room at the beginning of an Ontario Municipal Board hearing and the chairman of the Ontario Municipal Board that was hearing this panel said, "Surely a municipality has the right to cook the books, because at the end of the day they have to go face the electorate." That was it. The legislation was out the window and we were dead ducks. That's what this legislation has to prevent. It's creating that accountability, that transparency. The municipalities can't just take the money and spend it where they want. If it's collected for a purpose, it has to be spent for that purpose.

Mr Galt: I hope the words you used weren't a quote.

Mr Mondell: It was a quote.

Mr Galt: That's most unfortunate. Thank you very much for your comments.

Mr Tom Froese (St Catharines-Brock): Doug stole my question, but just to reiterate what you said, I totally agree with your statement that some of these reserve funds should be set aside. In one development in my area there was a development of a parcel of land and they had to expand the lagoon and only half of it was developed at the time. That's some years ago. The developer went bankrupt and everything else. Now the next set is being developed — this is after 15 or 20 years — and now they're paying for the expansion of the lagoon service again. Who pays for it? It's the consumer, the people who built in that subdivision initially. They paid for the cost, and if the municipalities would have set aside

\$50,000 for this, that fund could be up somewhere around \$500,000 already. It was spent somewhere else.

Dealing with the accountability factor, I guess your suggestion would be to set those funds aside in a reserve fund and then we could all feel that they're accountable and that we wouldn't be double-charged next time that same subdivision is being expanded.

In my former life, I financed developers. The argument saying that developers are going to make all this money I don't agree with, but I understand why people say that. I wish they would just sit in the developer's shoes and understand that when you're hit with a recession, you've got to hang on to this land, you've got to keep it. I've had some experience with that before.

You said before that development charges were increased by 10%. I guess I'm making a statement, but a small question here: Do you feel the services were increased by that 10%?

Mr Mondell: No. I think my reference with that figure is that most municipalities, or every bylaw that I was aware of, have the ability to index. I personally feel there was a problem with the way that was set up. There is going to be some attempt to change that in the new legislation. We were getting indexes that municipalities were using coming out of the United States that had no bearing on the real costs we were dealing with here. As a result, you saw on a semiannual basis many municipalities that continued to index. Some decided not to; some that were more aggressive decided to. So while we saw costs decreasing, and we heard earlier presentations about the line being held on taxes, many municipalities continued to index their lot levies even through periods of time when inflation was not at that rate. The indexes were flawed. That's not so much a municipality's fault, I would suggest, but those increases really came about as a result of indexing more than anything else.

Mr Gerretsen: Perhaps I should tell you that I've been involved both on the development side of things and on the municipal side of things from time to time over the last 20 to 25 years or so not at the same time. It always seemed to me that the much larger problem has been the speed with which development gets approved. That's a much greater concern of the industry than what the current lot levy may happen to be at any particular time.

You talked about fairness and accountability. I guess it's a little bit like beauty: It's in the eye of the beholder, it depends where you sit, as to whether or not a particular system is fair or accountable.

It always seemed to me that whenever developers came forward and started crying poor — a municipality's finances are pretty well known: what the money is to be used for, what reserve funds are there etc. The moment you start asking the other way and saying, "All right, if you're really so badly off in these particular circumstances, then you show us your books," immediately there's a great reticence about that because it's private and blah, blah, blah. My point is that if you start talking about cost-benefit analysis on the one side, we have to look at it from the other side as well. Don't come crying poor to a municipality or to a committee of this Legislature if you are not prepared to open up your financial

side of things as well. It always seems to me it's a one-way thing in that regard.

You at least, I'll grant you this much, have given us a couple of examples in a very indirect way as to how you felt that some of these development charges were being improperly used to finance art galleries, museums and city halls. We've heard about this off and on, both during the committee hearings and also before that, that this is going on on a regular basis throughout Ontario. Would you be prepared to list some of the municipalities that are actually abusing this right now? I know you're not willing to because you may want to develop there, but let's have some specific examples of where this has actually been abused.

Mr Mondell: I think you've probably heard from some of them in the previous few days. That's what's been amazing in my mind, some of the rhetoric you've heard from the municipalities.

I find your question — I think it was a question — very interesting. My company has been around for 50 years. We're developing land today that was bought in 1969. It was supposed to be five-year land. Unfortunately, I don't have the number of years of experience when the process did go quicker. My professional experience has been one of a very slow planning process.

The one way I have to answer is to look at you and say, look at the large development companies that we all knew and loved in the late 1980s that aren't around any more. I would suggest to you it's not because of the large profits they made that they packed up their bags and went home. They are no longer around because it's a very risky and a very capital-intensive business that we're in. I would suggest to you that with the increase in risk is an increase in reward. I can tell you right now, sir, that the rewards are in no way indicative of the risks that are being taken in this industry right now. The profits that are being made are very small. I can tell you that we sit around boardroom tables and try to figure out how we get that final house price down to \$139,900 because someone's doing it in Mississauga. If I'm not competitive with the guy in Mississauga, I'm not going to sell in Oakville, and it has to be cheaper in Burlington. My costs are no different, though.

Mr Gerretsen: Yet you're willing to do something about the transit situation and you say, "Yes, there should be development charges for that." Well, in my municipality of Kingston, transit is not a big thing but quality of life is. So it may very well be that in my municipality, which doesn't have any development charges currently at all, I should tell you, the notion of having some of the charges paid into, for example, the Grand Theatre or the renovation of city hall or something like that is a lot more important to those people than whether or not money is being set aside for transit. Should that not be left up to an individual municipality, then, to work out with its local building industry what would be appropriate in situations like that? Why have provincial government regulations or legislation in that regard?

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Mr Mondell: Unfortunately, I think if the spirit of the existing act had been adhered to and municipalities had played in a fair and equitable way, we wouldn't be sitting

here today. The spirit of the 1989 act, if it was intact today, would have solved all of the problems it was intended to solve. It didn't work. Unfortunately, while the municipality that you represent may take a view that is fair and equitable, there are many that don't. All you have to do, sir —

Mr Gerretsen: Why don't you list them? Do you want to list those?

Mr Mondell: All you have to do is drive along the QEW through many other municipalities and you'll see what's been built over the last five years. I will point out, if you would, on your way back to Toronto, as you're going through Grimsby, look at the water filtration plant, but before you get there, look at the old sewage treatment plant. As you're going through Oakville, look at the new sewage treatment plant just after Bronte Road. I'm not going to sit here and tell you those were built with development charge dollars — I don't know — but they weren't built with their own money, I can tell you that. Someone paid for them. I would suggest to you that the detail on some of these buildings — the roofs, the windows, the brickwork — is far better than any house I've ever lived in and probably ever will.

I look at some of those buildings and wonder if maybe as my daughters get older we can rent a space for a wedding in there, because that's the quality of facilities they've built. I don't know where we went wrong. I don't know why people decided they had to build these things to the level they did. The accountability, sir, is not being adhered to by municipalities, and I would be very glad to give you some examples in private.

Mr Pouliot: You don't plan on running for council, do you?

The Chair: Mr Mondell, on that note, we thank you very much for coming before us this morning.

Mr Mondell: My wife would give you a different answer.

Mr Gerretsen: That's on the record, isn't it?

JOHN CROSSINGHAM

The Chair: At this point I'd like to welcome the deputants from Crossingham, Brady, Miller, please. Mr Crossingham? Welcome, sir. The presentation time of 30 minutes includes your own presentation and the questions from members of the committee.

Mr John Crossingham: I'll try and be brief. I am here on my own behalf. I am a solicitor. I've practised law in the city of St Catharines for 25 years. I practise principally in the area of municipal law and assessment law. I have the great privilege of acting for the town of Niagara-on-the-Lake. I also have the privilege of acting for private developers, and I've seen this circumstance evolve from both sides of the fence. I think there is a role for responsible municipal accounting in the development charges, and I think there is generally a willingness on the part of the development community to make a reasonable contribution to the improvement of the communities they are in.

With that, there is one overall theme that I'd like to leave you with. If there's only one thing you remember from what I've said — I think it was Woody Allen who

used to have "Author's message" flashing on the screen at this point in time — it is that development charges should be a global charge for all offsite services within urban areas. I'll discuss that concept in a number of veins.

I've seen the issue of development charges in the town of Niagara-on-the-Lake, for example, evaporate when people say, "Well, we're paying this amount but what are we paying it for?" and when they realize that that is it for offsite services, that they aren't going to be hit with additional charges for doing their own works offsite, that there's a total charge for the amount to be paid, the objection generally evaporates.

What this involves is some requirements on municipalities which, surprising as it may seem, don't seem to be universal. First of all, this concept would require municipalities to actually know what they were doing to service offsite. The level of development generally is an unknown and, consequently, you have ad hoc circumstances arising where the municipality will say: "That's fine. You have an urban designation in our official plan, but we don't have the services in that section for you to proceed. So you're either going to have to front-end the services into that area" — and I think you've probably heard a great deal of criticism of the ineffectiveness of front-ending" — "or you'll have to construct it and hope that we can recover the costs from subsequent developers," and I've seen that create a number of difficulties. In fact I've got an OMB hearing in just about a month's time where exactly that issue is going to come up between two developers.

The necessity in municipalities that are imposing development charges of making the development charge a complete list of what needs to be done is something that perhaps is beyond the scope of the legislation but it would certainly eliminate, I believe, a great number of the disputes that have arisen and would not give rise to these ad hoc circumstances. You should be aware that under the current section 45 of the Development Charges Act there is a prohibition against a municipality entering into an agreement to levy charges for specific services that are offsite. That piece of legislation, I believe, was designed to make development charges a complete service.

The problem with that is that the municipal board has interpreted that section so that the municipality can't force an agreement, but they have made it a requirement of receiving draft plan approval for subdivisions. So in effect, the old ad hoc bargaining situation can arise again, and does, and is dealt with on, as I say, an ad hoc basis that really is the luck of the draw. If your development happens to be the last development in a string of developments and all the other ones have been allowed to go ahead with, for example, inadequate storm drainage, all of a sudden you're sitting there faced with very extensive works onsite, the principal purpose of which is to deal with problems that have been created on other people's lands, and I can give you specific examples of that in the town of Grimsby where we have exactly that problem.

There is a second aspect that's important in this in dealing with the global concept of development charges. It is that municipalities have had a tendency to play

catch-up. There are circumstances where the level of service is set — and I believe the legislation will be addressing this and I think that is a good idea — and therefore there will be an understanding of what has to be contributed to. The difficulty, of course, is that in official plans and other documents, studies in the municipalities, they create in essence a wish list of how they would like the community to be. It's a good idea to have that, but when those standards are then turned around and incorporated into the development charge, the preponderant payor is always this person who is not there.

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I can give you one example, since examples seem to be important: In the town of Lincoln we have a situation where there is a storm water requirement. There have been existing flooding problems since 1978. The storm water in the area is contributed 62% from either municipal roads or existing development, but when you look in the development charge at how this is to be spread, the municipality picks up \$1.5 million out of the \$4-million bill, and \$2.5 million is put on the development community.

On top of that, a \$500,000 pipe that's necessary for my client to connect into the system isn't in the development charge, so he's going to be faced with one of these ad hoc situations where if you want to go and connect to this facility that you're contributing to, your particular piece of land requires an extra piece of equipment. I haven't got the request for that to be a condition of draft plan approval yet, but I'm expecting that will be forthcoming. I know my client would be quite delighted to know what the total bill was and to pay a fair share towards that.

Soft costs drive the development community crazy, and I can say that in the town of Niagara-on-the-Lake our soft costs are minimal. Our administration cost out of a \$6,000 development charge is \$128 and it goes entirely to the cost of future studies. We don't have town halls in it. There is a library charge. We don't have museums. Most of our development charge is into roads, sewers, storm water, watermain. As I mentioned in my memo, the development community is looking for steak and potatoes. They aren't looking for ice cream and chocolate cake. If you can produce a development charge that addresses the hard service issues, my experience is that a municipality will have little difficulty with the development community.

Finally, there's need for coordination of an overall approach to charges because one of the principal areas where you may hear complaints or may have heard complaints is in the area of park because there's an overlap between the cash-in-lieu-of-parks dedication available under the Planning Act and the possibility for park dedication under the development charge.

The new act goes some distance to address that issue because they are trying to eliminate park dedication as a portion of the development charge. What I would suggest is that there's another — I won't call it a loophole — possibility under the cash-in-lieu provisions which has been exploited by some municipalities and led to some difficulties, and that is that the cash-in-lieu-of-parks

dedication can be collected at the building permit stage on building permit value.

If you take a typical piece of subdivision land as raw land that might be worth \$40,000 or \$50,000, you take 5% of that per acre and you have a contribution for parkland on a raw land basis. If you take it as development land, it would probably be worth \$50,000 a lot, and you're looking at probably six, seven or eight lots per acre, so that the amount of the charge goes up by somewhere between six and eight times.

The result of that is that there really is no need, in my opinion, for either a park improvement charge or a park dedication charge in a development charge where the funds are collected at the building permit value because what you've got built into that 5% is not only the raw land cost for acquiring the park but also all of the development and improvement costs, which should go a long way towards compensating for arenas, ball diamonds or the other facilities that would be attendant on a park development scheme.

In some municipalities, of course, you'll run into those costs being collected in both instances because the municipality would collect at the raw land stage on the subdivision but might collect at the building permit stage on a severance or a redevelopment of lands. Under those circumstances, if the municipality had a park improvement portion to their development charge, there should be a setoff against the park improvement portion where they're paying at the higher rate.

The municipalities also have the ability to levy charges under section 221 of the Municipal Act and, interestingly enough, there is no appeal to the Ontario Municipal Board. There used to be about 10 years ago and it was removed. That section allows water and sewers to be installed. Again, it would be useful if the legislation had a mandatory setoff so that if you were paying for offsite sewers by virtue of a charge either under 221 or under the local improvement act, you got an automatic setoff against the portion of the development charge that was dedicated to the same service. So if you were already actually paying for offsite sewers, you wouldn't be paying towards communal offsite sewers because you had a specific dedicated amount that the funds were going to.

The situation is slightly different where you're dealing with offsite services in rural areas rather than in urban areas, and in the municipalities in this area we have both circumstances. In cases where municipalities have differentiated development charges — in other words, a universal charge throughout and then an urban service area charge for the hard services like water, roads, storm and sanitary sewer — having an offsite specific charge there makes a certain amount of sense and that could be either handled as a front-ending circumstance or as an area of specific development charge, and that would allow development to proceed.

The real plea, I suppose, is that this legislation be directed to urging municipalities to develop not only pretty pictures and fancy coloured drawings in their official plan but the nuts-and-bolts servicing that goes with it. Knowing what needs to be done in an area will allow the development community and the municipalities

to work together towards achieving the installation of those services and the proper sharing of the costs.

The Chair: Thank you very much. We have just about five minutes per caucus, and we'll lead off with Mr Sheehan, please.

Mr Frank Sheehan (Lincoln): John, how are you doing?

Mr Crossingham: Wonderfully well, Frank, actually.

Mr Sheehan: Good. I have one question.

Mr Crossingham: But maybe you should pass judgement on that rather than myself. I don't know.

Mr Sheehan: You stated you had done more skiing this winter than I have, so I'm envious.

One question: Do you think that the proposed act will go a long way to addressing the habit or the practice, I guess we'll say, of some of the smaller communities that you and I know of when they start talking about these development agreements and then they use the — I don't know how they work it or manipulate it, but I'll put it this way, they apply undue influence on the developer or on the land owner to reopen old agreements where they forgot certain things or just generally compromise the developer's rights, I guess is what I'm saying.

Mr Crossingham: The development agreement is slightly different than the development charge. As I alluded to, not having the development charges as a global charge leads to the possibility of the municipality saying, "Well, that's fine, but we need to have this particular pipe installed in order for you to connect, and that's an additional charge."

The only way of dealing effectively with the development agreement is to make sure that the municipal board process — because that request by the municipality has been effective in the past regardless of what the equities may be because of the time delay involved in getting the matter adjudicated. If the municipal board hearings — and they are getting much better, I want to say that. I've been getting hearings that have been coming up much more rapidly lately that I had in the last five years — are quick enough, the developer would be able to say, "That is unfair and I want it adjudicated" and have an effective adjudication.

That's the key to eliminating that type of strong-arming by municipalities and that's far more effective than any alterations to the Development Charges Act. That really is your administration and the municipal board does an excellent job.

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Mr Sheehan: So the clarity that's put out in here, like the requirement to do a plan, a requirement that would specify what's going to be included in the development charge, and also to attribute or allocate — what do you call it? — expanded use to existing taxpayers, and therefore apply credits, that's a big improvement?

Mr Crossingham: Absolutely; no doubt about that at all.

Mr Hardeman: Thank you, Mr Crossingham, for your presentation. I just wanted to go to your development charges and the global charge. At the end of that part of the presentation you talk about soft services independently. In the global charge, do you feel that soft services should be part of the global development charge bylaw?

Mr Crossingham: I have a great deal of difficulty with the soft service portion of development charges because they are so difficult to pin down. The level of service is so hard to enumerate and to quantify. By and large, I think that has been open to so much abuse. If you can tie it down tightly by setting some objective means of standards, the continuation of that might be appropriate, but all in all, the area is one far more capable of abuse than productive assistance.

Mr Hardeman: If one separated the soft services from the hard services and set a standard — so much population per square foot in an arena, so much for ballparks and so forth — is there any reason why for soft services you would have a different development charge in different communities, why you would need to redo a study in each one? Would the cost of an arena in Mississauga not be somewhat similar to the cost of an arena in Niagara-on-the-Lake?

Mr Crossingham: I think you're probably accurate with that. The concern is how you tie it in with the park dedication. That's an area that's open to great abuse. I can give you a specific example. In Lincoln, under the development charges that existed at the beginning of this year, if you had a lot that was worth \$50,000, you would pay \$2,500 under the park dedication, cash in lieu, and in addition to that you would pay \$1,428 for the park improvement portion of their development charge. Every new homeowner in that community was paying close to \$4,000 for parks.

On top of that, under one development agreement the town attempted to gain a contribution under the development agreement for a contribution to a local park, and I think they wanted another \$10,000 or \$12,000 from the developer towards that park. We dug our heels in and said, "This is ridiculous, this is a triple charge," and the municipality backed off, but that still cost time.

Mr Sergio: First off, I have a quick question and then we'll see if I have a second question, depending on the answer. But thanks for coming down and making a presentation. There are three things attached to the bill as it is presented here: one says, to create jobs, the second, to make municipalities more accountable, and the third one, to recover development charges. I'll leave the last one for another question later on.

Whether it will create jobs, I really have doubts. We haven't heard really from anyone, including the developers, that this will create jobs. All right? With respect to accountability, and let's take the case of your own municipality here, local governments are responsible to all the municipality, not to a particular applicant or a particular location. I'll tell you why I give you my views and then I'd like to hear your comments, if that is the municipality's way of doing their own municipal work.

If we take the four corners here, Ontario Street and 410, or the Queen E, which attracts all the development, if you as the local municipalities are not able to spread the income from those four corners which attract development because of the location — it's got the cultural centre, it's got easy access, whatever — if you don't have the means, the flexibility to spread that income throughout the municipality, it means the rest of the municipality will suffer and the four corners will have everything. Do

you think that's fair from a municipality point of view, that all the development is concentrated at four corners, getting all the income, that it should be concentrated solely in that little corner there while the rest of the municipality suffers because you don't have development in the poorer areas of the municipality?

You, as local councillor or mayor, should have the flexibility to say: "Sure, we're getting development in a very demanding area, but we have to provide facilities in the other areas of our local municipality where it's poorer, doesn't get development. Developers don't go and build in there." Don't you think you should have the flexibility to use those funds to locate facilities in poorer areas, even though development concentrates in one particular corner?

Mr Crossingham: Are you referring to soft costs principally, or are you referring to hard costs?

Mr Sergio: Referring in general to funds that you get from one particular area.

Mr Crossingham: I think the answer to that question is really whether the municipality chooses to have separate development charges for portions of the municipality or whether it levies a development charge equally across the municipality. If it's equally across the municipality, I don't see anything wrong with, and indeed the municipality I act for collects, a uniform development charge across the municipality. The only differentiation is whether you are in an urban or outside an urban area. If you've got urban services, then you kick in for water and sewer and roads and those upgrades.

But it doesn't matter if you choose to develop at the Glendale interchange in Niagara-on-the-Lake, as we hope we will shortly, or you're in the old town of Niagara-on-the-Lake or in Virgil. Those development charges are the same and they are done on a pooling basis communally, and I don't see anything in the new act that's going to take that right away. So I agree we should have the flexibility; I don't see how the new act removes that. Indeed, that's how we've approached it.

The town doesn't have any particular fear, as far as I can determine from discussing with the staff and the engineering department and the finance department, about the new act in Niagara-on-the-Lake, because we've always dealt with the development charges on the responsible basis that the legislation now seems to be enforcing on more universal grounds.

Mr Pouliot: Thank you kindly for your insight. It's an excellent presentation. One of my colleagues has mentioned the preamble of the bill. You've obviously been through many pieces of legislation, and either they create jobs or they stimulate — governments successively are very good at drafting this. I seldom see a piece of legislation that is sponsored by whatever ministry that doesn't — it's a good-news item. It's called "spinning it that way," and they do that quite well.

This bill does help stimulate, promote, encourage the developers. It's one component in making Mr Mondell's and his distinguished colleagues' competition at the marketplace a little better. Mind you, Dave would be the first one to admit that if Mr Greenspan talks in his sleep or gets up on the wrong side of the bed one morning, that too — and his friend and close cousin, Mr Thiessen, to

follow suit. Give him about a month, a month and a half, we'll see, at most.

The demographics also play a part, and the general state of the economy. So this is along that side, but let's make no mistake about it. I've been with this vulgar trade for 12 years, and before that I had 10 years at municipal council. We always thought that we were more judicious at spending our money compared to the next town. We had the answer for everything in that field of endeavour, which we knew very little about, but they were always getting more money and not doing as good a job.

Assuming that not 100% of the savings will be passed along, it doesn't quite operate, it's not that perfect, it would mean there was less money in the community. Now the corporation will have to pay for the development. By way of a question, are we to expect fewer services, coupled with a higher levy at the residential, commercial and industrial levels, because we have to see the development? If we assume that the money is not being wasted, that those days are gone, people get more value for money, due diligence is the order of the day, where is the money going to come from? Otherwise, those people will have to believe its tales of Houdini.

1210

You see jobs there, but who's going to pay for this? Because now the developers are not going to fork the money over, the citizens will, so it's called a levy. You can't have it eight different ways. What will happen?

Mr Crossingham: I think the idea I'm proposing to you is to use the development charge as a means of the community sharing among itself — and that's the development community and the existing residents — the cost and benefit of the development. It is in essence using the community as a facilitator. Let's take an example. We've got a stormwater pond in Lincoln, okay? I've got this meeting coming up tomorrow morning. One fellow there is a farmer. He farms his land, so his taxes are quite low, but he happens to own the piece of land that's key to having the stormwater pond on it.

His carrying costs are very low. Now, upstream from him you have people who own the land, who've paid development prices for it. It's in the urban area boundary; they are anxious to go. The role the municipality can play in bringing those people together and in setting a charge and in sharing that cost, because the bargaining positions among those people — strange as it may seem, the farmer is in the strong position.

I hate the phrase "win-win," but by imposing a development charge, by knowing what their works are, where they're going, how they're going to engineer it, how they're going to pay for it, the community allows the whole process to proceed, whereas otherwise it becomes roadblocked because one person decides, "Well, I'm not developing right now; I'm quite happy to continue to plant grapes." Then the whole thing grinds to a halt. The development charge, by spreading that load among the municipality, can provide a very real vehicle if the municipality uses it wisely to facilitate development within its boundaries at an economic price.

The Chair: Thank you, Mr Crossingham. You bring a new perspective to the committee this morning and we thank you for sharing your views with us.

NIAGARA HOME BUILDERS' ASSOCIATION

The Chair: I would now like to call representatives from the Hamilton Home Builders' Association, the Niagara region. I believe it's Mr Rawlings and Mr Szpirglas. Welcome.

Mr Ian Rawlings: Thank you very much, Madam Chairman. My name is Ian Rawlings. I think, for the record, I could clarify perhaps what was some miscommunication. Both Larry and I are here indeed on behalf of the Niagara Home Builders' Association. I'm sorry for the confusion. I suspect we created it, but I believe we can clarify it. The record's clear now.

I'm a planner. My friend Larry is a builder. I'm also past president of the Ontario Home Builders' Association. I'm also a director of the Ontario New Home Warranty Program. Clearly, we both work in the residential construction industry here in the Niagara region and we also represent that industry at the land development committee of the Ontario Home Builders' Association.

On behalf of the builders in the Niagara region, I'd like to thank you for holding this meeting in our area. We appreciate the extra effort of travelling around the province to hear the views of people who are affected by development charges. I'm sure you're all becoming fans of each successive municipality's hotel accommodations.

Mr Gerretsen: We drive home every night.

Mr Pouliot: You make the question so easy.

Mr Rawlings: I'd like to take a couple of minutes to give some general context to the policy debate that has driven Bill 98. Then I'd like to turn things over to Larry to talk about some of the more specific provisions of the bill.

To set the stage, let me briefly describe what has happened to development charges over the last 10 years. If you turn to the back of the text of my remarks, you'll see a chart that sets out data for four different years for the Niagara region. The 1985 data is for lot levies that were being collected under the Planning Act. The 1989 data is also for lot levies. This data shows the sort of increases in the 1980s that were giving us cause for concern then. In four years, levies more than doubled in Fort Erie and Lincoln. In general, they were tending to move toward the high end of the 1985 range.

The next column on the chart is the data for 1992. This represents what we'll call first generation development charge bylaws that were passed under the original Development Charges Act. You can see that one apparent and obvious result of the new legislation was huge increases in levies, or development charges as they are now called. The charge increased by a factor of 12 in Thorold, six times in Fort Erie, and quadrupled in Niagara Falls.

These increases did not occur during a time of growth. In 1989, just over 3,500 houses were built in St. Catharines. Since then, annual housing starts have fallen by 50% to 60%. During the same time, charges in St. Catharines more than doubled. This single fact, more than any other, explains why the home building industry has called for the reform of the Development Charges Act. It explains why we are also supporting the restrictions that are proposed in Bill 98.

I want to say a little bit more about this contrast. The original Development Charges Act was conceived and enacted in the 1980s, but the legislation was not implemented until the 1990s. During that period, the housing market changed dramatically and, I would argue, permanently. The principles that were embodied in the Development Charges Act may have been acceptable in the 1980s, but they are, in my opinion and in our industry's opinion, entirely inappropriate for the 1990s and for the foreseeable future.

Let's think about the typical home buyer in the 1980s. He or she was probably a baby boomer. The family probably had two incomes. The jobs were full-time; they were permanent. Real estate values had been climbing, so stretching the budget to buy a house, you could justify it on the basis of an investment in an appreciating asset, and in any event, we were all willing to take on debt.

How many of those characteristics apply to home buyers today? Quite frankly, how many of them apply to any of us today? If you said "none," you probably have as good an understanding of the market as anyone. Now, some buyers may still be coming from the end of the baby boom, but jobs aren't secure. Employment is shifting to contract and part-time. Real estate values are just starting to edge up after a lot of buyers in the late 1980s lost equity, and consumers are more interested in paying down debt than they are in acquiring it.

I invite you to take a moment from your travels and spend an afternoon in a sales office and find out just how price-sensitive today's buyer is. I think that experience would be more than enough to convince you of the negative impact that high costs have had on the market. It should also convince you of the competitive nature of the market. I add that just in case you're tempted to think that savings on development charges will not be passed on to consumers.

I'd now like to turn things over to Larry to talk about some of the specifics of the bill.

Mr Larry Szpirglas: Thank you, Ian. When the government asked us what sort of charges we thought were necessary, we had a simple list: (1) to restrict the scope of eligible services; (2) to define "growth-related" in terms of benefits; (3) to limit the level of service that can be financed by development charges to a historical 10-year average in a municipality; and (4) to improve the accountability so that homeowners have some assurance that they will eventually get what they paid for. All four of these are discussed in detail in OHBA's written response to Bill 98. Today I want to confine my remarks to the first two points.

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With respect to scope, part of the problem with the current scope is the long shopping list that translates into high charges, but this is only part of the problem. Development charges are flat-rate, regressive taxes. These two characteristics make them an inappropriate revenue source for many services that are currently eligible.

Flat-rate taxes do not encourage conservation, so they should not be used for electricity or solid waste. Both uses are still allowed under Bill 98.

Regressive taxes should not be used to finance services that redistribute income. Both libraries and education

involve an element of income redistribution and both are still eligible under Bill 98.

In addition, capital spending forecasts for development charges are calculated over 10-year periods, but some of the eligible costs, like furniture and rolling stock, will be depreciated in less than 10 years. There is no reason to use development charges to finance the initial purchase of these things.

The government has moved in the correct direction in limiting the scope of eligible services, but further restrictions are consistent with sound principles of tax policy.

I want to turn to a definition of "growth-related." The current Development Charges Act says that the charges can only be used to finance growth-related capital expenses. It then defines "capital," but it does not bother to define "growth-related." As a result, many municipalities use what is called a trigger test to determine whether an expense is growth-related, and that test works like this: If the municipality did not grow, current services would not have to be expanded or upgraded. If there is growth, the services need to be expanded or upgraded. Therefore, the entire cost of expansion or upgrading is growth-related.

If you say it quickly, it probably sounds reasonable, but not if you consider the benefits. If you widen a road, existing residents will benefit from reduced congestion. If you build a new indoor recreation centre or library, people will come from across town to use the newest and latest equipment. As well, there's a possibility that the building of a new facility might not necessarily be in the area of new development.

As well, sometimes when you expand something like a sewage treatment plant, you have to upgrade the plant to current standards. Why should the entire cost of upgrading a substandard plant be deemed growth-related and financed by families in newly developed areas?

Proponents of development charges often justify them by saying growth should pay for itself. This principle may or may not be reasonable, but let's accept it for the sake of argument. The trigger test that many municipalities use entails far more. It means that growth ends up paying for itself plus the needs of existing residents. By defining "growth-related" in terms of benefits, we help ensure that growth will not be forced to pay for more than itself.

To summarize: As background to specific amendments, we have tried to explain how changes in social and economic conditions have made the original Development Charges Act outdated. Turning to specifics, we have argued that certain services should not be financed with development charges as a matter of tax policy, and we have explained why "growth-related" should be defined in terms of benefits.

Thank you for your attention and we'll certainly try to answer any questions that you have.

Mr Gerretsen: Thank you very much, Mr Rawlings. I'm very intrigued with your presentation. I think what you've probably outlined for me is the notion that — I'm just looking at your chart — the rates do not just go up but they also come down.

The point I've been trying to make, or at least that I'm sort of stuck with in my own mind, is the notion that

municipalities surely somewhere along the line will realize the fact that if they want to have development take place in their municipalities, if the development charges at that particular point are too high in relation to other adjacent municipalities, they will lower them. I see, according to this chart, this has actually happened in some cases.

Why it's happening in some places and not in other places, I don't know; there may be particular local circumstances I'm not familiar with. Would you like to comment on that? I notice that three or four of them have come down. I assume it's as a result of development pressures.

Mr Rawlings: I suspect you've accurately assessed why those reductions may have taken place. What I would suggest to you, however, is that the reductions you see are largely within the period of 1992 to 1995. What I think it speaks to is what we believe is one of the major flaws out of the whole prospect of development charges; the legislation that was last put in place essentially is where the major flaw is. It allowed a broadening of chargeable items, if you wish, to be encompassed within development charges. Many municipalities, quite frankly, took advantage of the legislation, and I'm not sure I can fault them for that.

I think some of those municipalities equally have understood, through the passage of time and as the housing starts diminished and dried up in their municipalities, that they were losing out. They were losing out on tax assessment on the houses that were otherwise to be built; they were losing out in having people employed building those houses; and they found that being dramatically impacted were their other user fees usually associated with all the activities of getting housing built in the community. In response to those situations, there are certainly municipalities that have said, "We've got to deal with the problem here at home to the extent we can," and have reduced some of their charges.

Mr Gerretsen: I guess the point I'm trying to make is that if we believe that in your business it's supply and demand that drives it at any given time, wouldn't those same principles apply to municipalities as to how much and for what they're actually going to charge? There somehow seems to be an underlying theory that most municipalities don't know what they're doing, that they're being run by incompetent staff and councils etc. I suppose there are just as many incompetent councillors out there as there are incompetent builders.

Mr Rawlings: Probably right; that's correct, yes.

Mr Gerretsen: Why wouldn't those same principles that run your business run the amount of development charges that municipalities will or will not charge at any given time?

Mr Szpirglas: Mr Gerretsen, I think there are couple of answers to that. As you know, in business timing is everything. One of the big problems we encounter as builders and developers is the gigantic bureaucracy we have to negotiate through. That comes into play both in negotiations around the development charges in terms of their initiation and also decreases in those development charges.

I know there was a presentation made earlier by some of the municipalities. There was an inference that they had worked very closely with the home building industry to reduce the charge significantly. I think the amount was from about \$10,000 down to about \$1,800.

The reality of that negotiation was that it was anything but friendly and it was extremely intense. The reality was that the decrease came about as a result of the industry being able to basically pick apart the proposed bylaw, and second, to threaten to go the OMB. I think that becomes part of the problem; it becomes part of the equation in the negotiations process.

We usually receive the bylaw about two weeks before it goes to a public meeting, so the ability to discuss and negotiate and take a look at a reasonable explanation of why charges exist is very limited to the industry. But over and above that, it would be foolish to think it's an easy kind of negotiation that occurs.

The charges are down for a variety of reasons. One of the problems is that timing is a problem, because by the time you work it through the bureaucracy it may be too late for you to catch the market.

1230

Mr Gerretsen: Just one final question that deals specifically with time. It's always been my experience that it's the speed with which development gets approved that is probably a much greater issue than anything else. Do you have any comments on that?

Mr Rawlings: It's certainly of interest to the development industry, but what we're really speaking about here is representing the interests of the consumer who's trying to buy a house, who's trying to grapple with the issue of affordability, who's trying to get their foot in the door. To a certain extent, their ability to achieve that is barred because the act we have in place now has set the floor too high.

Mr Sergio: Do we have time for another quick question?

The Chair: Thirty seconds. That's it, and I'll cut you off.

Mr Sergio: What is the problem here? Is the problem with high fees, development charges, whatever you want to call them, or are there other problems, as you see it? If it is strictly high charges, can't we work that out? I am sure some changes are required in some areas in municipalities. But is your problem bigger than that? Does it have to do with more than high development charges or does it perhaps have to do with how some municipalities, not all of them, run their business?

Mr Rawlings: Unfortunately, there's no easy answer. I think there's a combination of issues. Clearly, our interest is to be able to ensure that the costs borne by our customers are legitimate, that they're associated with the costs incurred in producing the product they're buying — and no more. That means we need to deal with the act, and that means, in some places, that we need to deal with municipalities that perhaps are greedy.

The negotiation process that Larry described to you largely revolves around the space between the floor of the charge that would be otherwise sustainable by the legislation and the figure the municipality ultimately chooses to levy.

Mr Pouliot: Mr Rawlings, I did appreciate your sensitivity about the motels. On Monday it was the Crown and Anchor, on Tuesday it was the Maple Leaf Motel, but all of them have fresh sheets. Some first-time members, and I can understand their dilemma — the people opposite, for instance, would much rather be on the road than at home. When you're the government, not all politics are local; if you go away, maybe people will forget.

I'm intrigued with your page 5. Do I still have immunity? I won't repeat it outside but it seems to me, and this shall remain nameless, that there was an opportunity here to take money. I see some charge from 1985, \$370; 1995, \$5,000. The price of brick and mortar did not go up that much, no way. It was an opportunity and people seized it; they filled the vacuum. It's not all bad, maybe, but you feel you've been targeted, that you were victimized. That's bad because you preach for your parish — nothing wrong with that.

You see, the money went from you and into a vat called the general fund. No treasurer, no chief administrative officer, likes dedicated amount. They like to take all the money and put it together, and then out of the concoction they dole it out. That's what they do. People don't like dedication, because then it commits them. It saps their energy. It could cost them votes. They lose the loyalty of colleagues. It's very, very important. I had four ministries with the other administration.

You see, you get a break today.

Mr Rawlings: So far, I guess.

Mr Pouliot: If I want to avoid the fate of Trizec, Olympia and York, Tridel, Cadillac Fairview, Campeau Corp — if they weren't so low, I would short every damned one of them. At least I wouldn't die poor.

When I see those communities and they know you've been getting that break — it's cause for celebration, but be cautious. I never underestimate the ability of elected officials to get you. With some of them, you'll start thinking you have a new definition of organized crime, because they'll come and get you one way or the other. Otherwise, you won't have the services. People will shy away from development. It's not good news; it's bad news. What do you do there? What's your fear? Imagine I'm on your council.

Mr Rawlings: First of all, sir, I lost my hair honestly. I understand some of the things you're referring to. I'd like to clarify some of your suppositions behind your statements. Number one, my constituency today is purchasers of new housing. They're not my industry association. What I'm looking for is a fair deal for those people.

The void or the vacuum that you referred to that is obviously apparent from the increases in the figures is exactly the issue: Is it a vacuum that was created because of need that needed to be appropriately addressed by tacking additional costs on to the backs of one small component of the community? I think not. I know not. It makes my point, sir, that the act we are attempting to correct and revise is to a large extent the fly in the ointment. It has allowed, in fact reinforced, many of the actions to municipalities' increases in their development charges because the legislation allowed them to do it.

Mrs Fisher: I really don't even know where to start. He's such a hard act to follow. I'd have to have a few classes before I could ever get near that.

Mr Pouliot: Would you like me to continue?

Mrs Fisher: It's refreshing, but — anyway, thank you for your presentation this morning. As we go through each of those, we each learn something. I think that's the purpose of why we're here.

I have a couple of comments and then two questions. I'll probably be cut off before I get through this. The first one is that I'm looking at the increases in development charges over the number of years. I'm sure you could do this, but for somebody who doesn't live in this area it would have been very interesting to see what it did in terms of new housing starts, the impact on the same years. Where the development charges were going up, it would be very interesting to see what that did in terms of impact on new housing starts. Without having that in front of me, do you have some idea of what that did?

Mr Rawlings: I think it's fair to say that we would all understand that this is one part of a puzzle. We can't deal with the other parts today, but I think in my presentation remarks, the indication I'd given was that these increases were clearly occurring at a time when housing starts were dropping and dropping dramatically. In response to an earlier question, it's equally clear that some municipalities have seen that there is a role they can play in reversing those trends to the extent that they have reduced their development charges as an opportunity to initiate, to kickstart, if you will, and resuscitate an otherwise languishing new home construction market in their municipality.

Mr Szpirglas: It doesn't necessarily relate to this area. In Hamilton-Wentworth the combination of reductions to the development charges, both by the region and the city of Hamilton, resulted in, in 1993 or 1994 — I'm not sure which year — that community becoming one of two across of the province that saw two or three new subdivisions being started, directly as a result of those reductions. It gave enough of a reduction that it gave some confidence to the developer-builders to move forward. That resulted in a number of things; it resulted in some employment in that area. That's one example that's fairly concrete that we could certainly put forward.

Mrs Fisher: I represent a rural riding and I do have some municipal background as well, and the discussions in the settings we've travelled to over the past couple of days are quite different from what often you find in a rural setting. Whether they should be is another question, but I can tell you that they are different.

I do agree with Mr Pouliot that the fees find themselves flowing into this general revenue fund or into this general reserve pot, untaged. I agree also that part of the bill is intended to bring more accountability and better identification as to where those funds are going and for what purpose, and that they be there when the time for drawing on them comes.

For the home buyer, if that is what this is generally intended to do, to resolve that grey area, how would it best be done; that a municipality that holds those reserve funds identify them so that the new home buyer coming in knows at the start what to expect in the future when

the demand for the service that they as a community decide is needed, through direction to their council, and how would you, as a developer — I guess the question would be, you would be more comfortable knowing that those development fees would be eventually expended on what the purpose was in the beginning, and the council would have a clearer picture as to where they're going and have those funds available when they're needed. Would you agree that this is now going to be managed through this bill?

Mr Rawlings: Certainly there are some opportunities for significant improvement over the situation we've experienced more recently. Being able to predict that the works identified as necessary to support the growth are going to be funded and are going to be built, the predictability and the accountability in terms of setting those moneys aside and directly tying them to the piece of infrastructure, is part of what is necessary and part of an improvement that we clearly see in the bill.

Many of the issues and many of these costs — quite frankly, the purchaser of the house really doesn't care. They want to buy a house and know that when they turn the tap on there's water, when they flush the toilet it disappears and so on. We'll call those hard costs. To a certain extent the predictability and the accountability with respect to those items is something that's necessary to give some confidence to the development industry that where there is infrastructure required to sustain growth, it will be in place when you're able and ready to bring product on to the market.

Some of the less hard costs, if I can say it that way, are those things that the customers do want to know about and to a large extent don't. When they do, the predictability of them being there, actually being funded as opposed to having the money slid off to some other favourite project of the year I think is a necessary component. Having some of the costs attributed to the existing tax base I think does two things, not the least of which attributes the benefit more equitably, as Larry's remarks spoke to. But it also brings that constituent and that ratepayer and that taxpayer into the debate and discussion and hopefully a decision-making process about, just what kind of facilities do we really want, can we afford, and when do we want them? Until those people are brought to the table, the people who are buying the houses don't have a voice.

The Chair: Thank you very much. We appreciate the time you've taken to come before the committee this morning with your views.

For the committee members, that ends the deputations for this morning. We will recess and resume hearings at 2 o'clock. We have three presenters this afternoon, until 3:30.

The committee recessed from 1244 to 1406.

The Chair: I call to order the afternoon sitting for the third day of the standing committee on resources development hearing deputations for Bill 98.

Just to remind the committee members as we begin, the next time we will meet to hear deputations is on Monday, April 21, in the afternoon, then Wednesday the 23rd, and then clause-by-clause will occur on the following Monday, the 28th.

Mr Galt: Just one day for clause-by-clause?

The Chair: At this point, yes.

Mr Sergio: What about the other day of hearings? We're supposed to have two days of hearings in Metro.

The Chair: Yes, the 21st and the 23rd, the Monday and the Wednesday.

JANNOCK PROPERTIES

The Chair: Our first presenter this afternoon will be Jannock Properties, Mr Fasken. Welcome.

Mr Mitchell Fasken: Thank you very much. Madam Chair and members of the committee, you've been distributed a copy of the presentation, and I'll do my best to follow it. I'm not much for reading and memorizing speeches. I'll probably diverge from it a great deal as we proceed, but hopefully the general intent follows the presentation.

My name is Mitchell Fasken. I'm the vice-president, real estate, of Jannock Properties, which is a division of a company known as Jannock Ltd. Jannock Ltd is a large, publicly traded manufacturer within Ontario. We are the largest producer of clay brick in Canada. Canada Brick is one of our subsidiaries. We produce vinyl siding, metal decking, metal siding, steel tubing. We are in a number of facets of the building industry in both Canada and the United States. Real estate is a non-core business for us and is a division which deals with our remnant manufacturing sites, residual lands and other holdings.

I come to you today wearing both hats for Jannock, because development charges have an impact on us from a real estate aspect but also have a significant impact on our manufacturing business and its direct relation to this economy in terms of employment, job creation and tax considerations. Development charges are an issue which in principle we support. We support the principle that growth must pay for itself. The issue is, what level of growth and what cost of growth, and what do we use as a benchmark and a basis?

Over the past three to four months, as all of you are aware, there have been a number of areas of agreement on the new Bill 98 between the development industry, UDI, non-members of UDI and the municipalities. I think we're now down to a narrow group of issues that are unresolved. We have sat with UDI as a non-member for approximately five years, interested in very specific issues from both our manufacturing side and our real estate side. About a year and a half ago, we decided to become an active member of UDI because we recognized that some of the issues were significant and had to be addressed, and UDI's balanced approach to many of the issues really enticed us corporately to become an active participant in that group.

In reviewing development charges, we really see there being a small group of unresolved issues. They are, generally: level of service; accountability; the issue of copayment or municipal participation, however we'll phrase it; waste management; transit; and hydro.

Before I touch on that, I want to just divert away for one moment. Since 1983, many of us saw real estate values rise; we saw inflation rise; we saw our standard of living rise until 1991. From 1991 — and I was hoping

there would be an easel here, so you'll have to bear with me, with one hand. From 1991 to 1996 we've seen drops in residential values, commercial values, commercial rents, of approximately 30% to 40%. In that same window, 1990-96, development charges through indexing alone have gone up between 10% and 15%. Everything is running a little bit backwards. Throughout industry, we've had to do more in our business with smaller margins and less employees, finding ways to struggle through. We haven't been able to just increase our costs annually.

While all of these factors have had an effect, probably the one exception to that was cost indexes. This is one of the bases on which development charges are based, the construction cost index, which just continues to rise. Realistically, value, salaries, net take-home pay, everything else — and all of us know — it's all reduced and continues to reduce. If we look at what has happened in terms of average rents for both residential and industrial buildings in terms of value, we've seen a consistent drop in residential value. Both of these charts are attached to the back of your package for reference.

Recently we've seen an increase in industrial rates only because no one has been building. When you add 20% to the cost of a building for development charges, people really think twice about, do they build, do they renovate an old building or do they simply move south?

We've gone through those very difficult decisions internally ourselves. With our business, we're related to a shale resource and we have to go where we can find a specific form of shale. So for our industry it's not easy to move. With some of our subsidiaries, that has not necessarily been the case. When you look at the cost of occupancy, which is a huge cost, you can many times move and look at alternative locations. Costs of issues such as development charges have a direct impact on the choice of location, the choice of your future facilities.

I'm now going to try to get back to the text of what you have before you, which will be a little bit easier to follow.

Level of service: The new act establishes the need for an average level of service over the past 10 years, which we strongly support. The previous act varied from that and allowed municipalities the opportunity to pick and choose among the highest levels of service. In one example, when we were dealing with the development charges in Burlington, they had brought six new buses on in one year, and that was the year that was chosen to represent the level of service: artificially, arbitrarily high. It drove development charges up, that one single item.

Accountability: This is one area where, at a local level and at a regional level, we have a great deal of difficulty. We cannot, as an industry — and typically it's an industry of one or two people, because we're not an industry that acts together. This is a very fractured, individual industry, and at times you will get three or four people who will work together, but typically you end up dealing with things on your own in the large majority of cases. But accountability and finding your way through municipal books and having municipalities provide you accurate, clear documentation has been very difficult and is very difficult in the current act.

What we're looking for is accountability, line by line, for projects, clear, long-term capital budgets and defined items so that items are not grouped together under one category. These are items which need to be addressed through the regulations. The municipalities have looked for the opportunity to group things, to group soft costs under "Recreational uses," which would be everything from park acquisition to recreation centres to libraries to other facilities, and just put it all together as a fund. We'd never, ever be able to figure out what they planned to spend and what they did spend. The municipalities do official plans, secondary plans, community plans and 10-year budgets, and with that, they should be able to tell us with a fairly high degree of accuracy their plans and their budgets.

Most municipalities do that today in the current Development Charges Act, and that's critical in terms of the new act, to ensure that the intent of this act in terms of regulations implements the need for clear accountability.

The next item is copayment, which clearly from a municipal perspective has been the most sensitive issue that we've dealt with. I don't really consider it to be copayment. I consider it to be municipal participation, municipal cost savings, or you can just call it belt-tightening. It's the same thing that throughout industry we have had to do. The proposed 30% copayment or discount, whatever you want to call it, has the same effect. It means that municipalities, instead of spending \$100,000 to build a facility, are going to have to spend \$70,000 to build a facility, and it means that they tighten their belt.

We've been told they can't do it. We've been told that if they do it, it has a direct impact on the taxpayer, and I don't believe that. One of the best examples of this has been the Peel public school board, which has reduced its cost of constructing school facilities by 30%. They have not diminished the quality of the school facility. You may not have marble in the front foyer now, you may not have great architectural tile in the washrooms, you may not have an atrium in the front entranceway, but you'll have a school, and you'll have a school that will function at a reasonable cost.

When you have a cookie jar that you can constantly reach your hand into and no one really cares how much you take out, or no one can account for what you take out, then you reach in more often and more frequently. That's really the best example.

The need for municipal participation, whether it's done through copayment, whether it's done through discount, whatever the vehicle, is critical, because the municipalities need to be forced, need to be driven, to find a way to be strident in their urge to save money and to do things economically. That does not exist today.

I'm a strong advocate of copayment. Whether copayment ends up in its existing form or is revised through an alternative vehicle, it still needs to be at a minimum rate of 30% because that is what will drive the municipalities to do the job and to do it right. We know it can be done. You can build a facility for 30% less than the municipalities project, because all you have to do is take out the tapless faucets, the autoflush facilities, the doors that

open by themselves that we don't have to have and that in the future we can't afford to maintain and keep up.

The last three issues which I'd like to address are:

Municipal hydro facilities: This is a rate-driven facility. Previously it was not a development charge item, and it's one of the items which the minister has suggested need to be looked at. It should go back to what it should have been originally, which is rate-driven. As a developer, we put in all the hydro services within a subdivision, and we typically also end up having to do the upgrades on the perimeter of the subdivision. We do the undergrounds, we do the street lights, we do the electrical service to the lot, to the lot edge, we do the transformers, switch gears, everything. What the hydro facility does is provide the main transmission lines and its facilities. It should be able to do that through its rates, to be honest and effective about the true cost of service.

Municipal waste falls into the same category. Municipal waste is user related. It is driven only by the costs of the people that are in the municipality and is not driven by growth. It's driven by the people, individual requirements. If I pay development charges, I don't get a credit on my taxes, because I pay development charges towards the landfill facility. It's double-dipping; it's double counting.

The last item I want to speak to you on is one that I guess from an industry perspective troubles us the most, because with the current downloading from the province, transit has become one of the aspirations of all of the planners. Everyone wants to create a transit split in the suburbs of 30%, 40%, 50%. The vision is, everyone will ride the bus. We have enough trouble trying to make transit economically viable in Toronto, where you have tremendous density. I don't believe there is a municipality outside of Toronto that runs a transit system that is not a significant drain on the financial resources of the municipality.

The decision to have transit grow and to become a big part of growth is something that the municipality and the taxpayer need to consider carefully, because if you build it, someone has to pay for it when the growth stops. That's the part that is not in this entire process: that as growth stops someone has to pay to run these facilities. That is what no one is looking at today.

1420

We believe that transit should be moved as a soft service. It's not a hard service. It's not like a road, it's not like a sewer, it's not like a water line. Transit is no different from a recreation centre, from a park. It's a true soft service and it should be funded 50-50 by the municipality and by growth, in terms of the outstanding growth.

In summary, we have to look back at what has happened with development charges. In our industry and in our economy everyone is struggling to find a way to reduce costs; we're struggling to find a way to do more with less dollars. If you look at your paycheque, if you take home the same gross pay you did three years ago, you sure don't take home the same net pay any more. Every year it erodes further. We cannot have municipal development charges, regional development charges and hydro charges continue to rise unnecessarily and take away the opportunity for growth in this province.

We believe that Bill 98, as proposed with the amendments before you, will ultimately set a tone for development charges which will be more equitable and more appropriate for the future.

Again I want to just focus on the last five items:

Municipalities must participate at a minimum rate of 30%. I think it should be more than 30%, but I don't think anyone will accept a level of more than 30%. But 30% participation, whether you call it copayment or whether you call it discount, is tightening the belt. It's what you at a provincial level are doing and nobody else wants to do.

Clear, transparent accounting is critical.

Use of the appropriate service levels, which is already in the act and we believe is one of the benchmarks in terms of development charges that will work in the future.

Control of costs of transit and ensuring that transit is moved to a soft service.

Last is the deletion of waste and hydro from the Development Charges Act, as those facilities are rate-driven and should not be part of the growth calculation.

With those items, I conclude my presentation to you and I would be pleased to answer any questions you may have.

Mr Pouliot: Mr Fasken, welcome and thank you. In retrospect, I'm happy I didn't have the means to purchase a residence in 1989 or 1990, as your chart indicates. As you make use of the chart to convey the message and tie it up with the charges since 1990 — the limited span. The time period is condensed. I'm just wondering if since 1990 is somewhat abnormal, given the conditions that prevailed in 1990, where people were flipping houses and it had gone up in excess of 30%, as your chart indicates for the Toronto area, a better representation perhaps would be a longer time table, for our benefit, to make the case. I'm not saying that this is distortion, but it is unusual.

Mr Fasken: I agree with you. I think if you went back to 1983, houses today are selling for the same price that they did in 1983, but development charges were probably between one tenth and one third of what they were in 1990.

Mr Pouliot: You've mentioned what are soft costs vis-à-vis transportation, and you point to others' inability to control costs: municipalities. Many municipalities, I think you will agree, have done a lot of good work. Property taxes have not increased in the past several years in some cases, so obviously it would seem the result of belt tightening.

On transportation — you're comfortable with that subject matter, I take it? — public transportation.

Mr Fasken: I wouldn't say I am comfortable with it. I have a limited scope of knowledge of it.

Mr Pouliot: I spent four years as the Minister of Transportation with the previous government. I'm not an expert on transportation, but from memory, the province used to pay municipalities 75% of the rolling stock, the hardware. One can make an argument that a subway train is hardware; the rail it rides on is hardware. Municipalities paid 25%. That has changed now. It's not easy.

I'll give you an example of the TTC. It has millions of users per year, as we're aware. At the fare box, the mandate is to get 68%, 68 cents of every dollar. The remaining portion, 32%, is split two different ways: 16 cents by the province, 16 cents by the regional government. If you jack up the rates, you have fewer users. If the recession hits, fewer people need public transit. If you don't do that, you cannot make ends meet. I don't think it's meant to be — at best, it would be a break-even.

The province still controls 100% of GO Transit. It has an offshore leaseback arrangement because they needed \$350 million, and they'll get the property back 15 years down the line. Their responsibility was 70% to be raised through the fare box.

It's difficult. If you want your trains to run empty — yet public transit is to be encouraged. It's a big, big item. We built the 407. When you say you build it and people will come, it's the busiest highway in North America, busier than Santa Monica. That's costing \$1 billion, so you're constantly fighting, trying to reach an equilibrium, like you do between public transit and the opportunity of people to drive their cars as well. It's one or the other. It's not easy.

You would like to know where you stand. Is there something like red tape that bothers you? Do you have the impression as a developer that from time to time you start doing one thing and the regulations or the rules change in midstream and you really don't always know where you stand? Would you like to see some simplification?

Mr Fasken: In the development industry the change is consistent. It has never stopped for us. Development is a moving target, and it always has been.

Mr Jerry J. Ouellette (Oshawa): I'll continue a bit on the transit issue, if you don't mind, but one quick question first. If the government were to pay 75% of the purchase of your vehicle, would you buy a Chevette or a Cadillac?

Mr Fasken: If the government was to pay 75%? I don't think there's any question about that. You scale up, as we see with interest rates today.

Mr Ouellette: I think that's part of the problem with some municipalities. We constantly see that a large component of the busing industry is empty. Do you think deregulation of the bus industry would assist that, to allow a charter service to compete with the municipalities? Also, I hear the same from the municipalities, that they would be allowed to compete with charter services and provide charters. Would that help the industry in that sense?

Mr Fasken: I'm not sure. When you drive down the road and see buses running every 20 minutes with two people on them, I don't think a charter's going to run that route because the money isn't there. You really have look at it and say, what do we really need to provide as a bus service? What do we need to provide as a transit service? Forget about what we decided back when the province funded 75%. What do we need now? What can we as a municipality afford to pay? Not interregional transit, not transit that's going to run from Burlington to Toronto and from GO Transit, because I think there is a market for that to be either funded by private sector or to be run by

the private sector. I'm talking about within the municipality. I don't know if there's an opportunity for competition, because the service requirements are so low.

Mr Ouellette: I think that's part of the problem, that Cadillac service is being provided for a Chevette requirement.

Mr Fasken: Exactly.

Mr Ouellette: Why do you think it is, as was mentioned earlier, that some municipalities can survive quite well, are thriving, without development charges at all, yet we constantly hear they'll virtually cease to exist — at least that's the impression we receive — if they are discontinued?

Mr Fasken: I think the bureaucracy within the municipalities have adjusted themselves to a lifestyle. It's no different than many of us have found; you're used to having a certain amount of money come in. Many of the municipalities implemented development charges when they were not a legal tool to use. They collected charges and used those charges for expenditures and they've developed a level of service that the public has expected. There are municipalities where the standard for parkland is 40% in excess of the provincial standard. Their decision is, "That's where we want to put parkland." Because they've established those levels of service, they now have to find a way to feed them, and development charges are the only way to do that.

Mr Ouellette: Again, Cadillac service where Chevette service may be required.

Mr Fasken: Maybe it isn't a Chevette, but the question is, what level of service is appropriate and what level of service can you continue to afford, when growth stops, without having to push property taxes up by 10% or 12% per year? That's the part we don't see people looking at effectively. We don't see that long-term cost analysis.

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Mr Sergio: Mr Fasken, thanks for coming down and making a presentation to us. What would be a fair rate that a municipality could charge for various development? What would you be willing to pay?

Mr Fasken: What would I be willing to pay? It's not something you can say what is a fair rate to a municipality. Do you pay the same rate for a \$70,000 house in Hamilton when the exact same house in Mississauga is \$160,000?

Mr Sergio: Don't let me lose my second question, please. I don't want to cut you off. Are you saying that binding legislation for the entire province is not advisable?

Mr Fasken: Are you saying a fixed fee, a fixed development charge province-wide?

Mr Sergio: That's right.

Mr Fasken: I don't think it's equitable, because percentages for costs of land, costs of housing, vary so dramatically. You pay the same development charges today on a \$1-million house as you do on a \$120,000 townhouse.

Mr Sergio: So it would be better if individual municipalities, according to their own needs and demands and whatever, should be setting their fees, together with the industry.

Mr Fasken: That is what this act will allow to happen. Municipalities will have to look back at what their level of service has been for the last 10 years. I think for the first time it should go back 15 years, because we have to get over the excesses of the last five in terms of upgrading service levels.

Mr Sergio: We have heard other deputants in the last couple of days saying: "No matter how much the fees are, we are just collectors. At the end, there is one user who is going to pay the whole shot." Is that true?

Mr Fasken: That's correct.

Mr Sergio: I'm not being fair with my question, but what's your beef if the end user is paying that particular fee? You're not defending the end user. I haven't seen one developer, I haven't seen one UDI member, I haven't seen one chamber of commerce defending the end user.

Mr Fasken: Why do you say that? That's an interesting comment. The issue with development charges is that they have a direct effect on the end price. When your market moved down from 1990 to 1996, when you saw a 30% reduction in house prices due to the rather unstable market —

Mr Sergio: I have another important question.

Mr Fasken: Let me finish. Did development charges drop, reduce to reflect the market? Did municipalities look at it and say, "We're interested in helping the purchasers, so we will cut our charges?" I want to give cities like Hamilton credit, because they did that.

Mr Sergio: A lot of municipalities did that.

Mr Fasken: A handful of municipalities did it, yes.

Mr Sergio: A lot of municipalities did that. If a lot of municipalities did that, why do we need today such blanket legislation that forces municipalities to do what the government wants and not leave it according to their own needs? If they don't deliver good services it's not a good government, right?

Mr Fasken: No, I don't agree with you.

Mr Sergio: Let me get to my question, please. You're saying hard services: sewers, water. You didn't even say transportation. Are you saying that a roads provision is not a hard cost?

Mr Fasken: No. Clearly the issues that the minister has outlined in his most recent revision to the act represent hard services: water, sewer, storm, sanitary.

Mr Sergio: You recognize that too.

Mr Fasken: Absolutely.

Mr Sergio: An existing community should be paying for street lighting in the new subdivision, hydro?

Mr Fasken: No. We, as an industry, install the street lighting.

Mr Sergio: You do?

Mr Fasken: We do. Today under all new municipalities, when we develop a subdivision we install the street lighting.

Mr Sergio: All right. If the new community which you're proposing to build will avail itself of the amenities in the established community and new amenities have to be provided in the new community as well, do you think that people in the older community should be paying for those services in the new community?

Mr Fasken: I think the community in a broad sense should pay those costs because you cannot differentiate,

from a property tax perspective, between someone who lives in an old community who didn't pay development charges that has those facilities —

Mr Sergio: What do you mean, "They didn't pay development charges"? I don't understand.

The Chair: We're going to close with this answer, please. You may finish.

Mr Fasken: You cannot differentiate an existing development that already has libraries, already has the services, has the roads, has the transit systems but does not pay development charges. In a new community the existing act charges people for all those charges but they pay the same level of property tax as the balance of the community.

The Chair: We must move on. Thank you, Mr Fasken. We appreciate your taking the time this afternoon to bring your views to the committee.

UPPER CANADA PLANNING AND ENGINEERING CONSULTANTS

The Chair: We would next like to hear from Upper Canada Planning and Engineering Consultants, Mr Hodge. Welcome.

Mr Richard Hodge: Madam Chair, committee members, good afternoon. My name is Richard Hodge. I'm president of Upper Canada Planning and Engineering Consultants. Our firm was originally incorporated in 1975 and provides planning and engineering services to both the private and public sectors. Approximately 70% of Upper Canada's work is derived from the private development industry. We process in the range of 60% to 70% of all the development projects in Niagara, so I'm completely familiar with development in Niagara. Being one of the original principals, I have practised for over 22 years in the development industry, and during that time I have seen our industry go from no development charges to the current system.

Prior to development charges, if a developer wanted to develop and the infrastructure wasn't in place, they either had to wait until the service was in place or put up front all the necessary costs to put the services in place. This resulted in delays in our industry and in many instances also resulted in the first developer paying for all the infrastructure costs, with the rest of the developers in the area riding on the first developer's coattails and no way for the first developer to recover his costs. This process not only resulted in long delays but it was totally unfair.

It appeared that when development charges were first introduced, there would be a system in place that would allow for upfront cost-sharing and a mechanism whereby municipalities could over time obtain funds to pay for the development-related portion of their infrastructure. In theory, development charges appeared to be a good thing. In reality what happened was that municipalities used the development charge as a way to obtain funds to upgrade their existing infrastructure and/or improve their existing levels of service.

As far as accountability by the municipalities, simply put they can work their numbers to show whatever they want, and in the past they have been very successful at collecting moneys for non-growth-related portions of their

infrastructure and have not, to date, shown any accounting with respect to what the funds were collected for or where the money was spent.

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Therefore I believe that the two key items that must be strongly and clearly addressed in the new act are:

(1) That the development charge costs apply to the growth-related portion only — in other words, not for upgrading existing services or fixing existing problems;

(2) There must be documentation and accountability for what is collected and how it is spent.

On the first item the act appears relatively clear. However, we haven't seen the actual regulations yet, even though I understand that they are out now, so we don't know how much weight they will carry.

On the second item, or at least until last night when I was surfing the Web and went to the Ministry of Housing, I thought the act had the right idea: Let the taxpayers ensure accountability by forcing the municipality to pay a share, the idea being that if they gold-plated the services too much, and with their nominal share of 10%, the result could raise taxes, and instead of one or two developers getting upset, hundreds of taxpayers would be affected.

The theory is sound. However, it appears as if this, in my opinion the single most important provision in the bill, that of assuring accountability, is going to be removed. In my opinion, the removal of the 10% share will also remove the accountability the development industry needs to ensure proper allocation of the development charges. Unless the municipalities share in the cost of development, there is no mechanism in place to ensure the funds are properly allocated and the services are not gold-plated. With the loss of a large portion of our industrial and commercial tax base, the downloading of services by the province to the municipalities and our aging infrastructure, now more than ever there is a need to make the municipalities accountable.

While I feel these are the major issues, I have a few others that concern me a little bit. We'll see what happens with them when the bill is finally passed. Niagara is different. We're not the same as the GTA. Our land area is larger, our population is considerably smaller — in fact it's less than Mississauga alone — and our land values and final lot sales are substantially less than in the GTA. This in itself is not necessarily a problem, but what happens is that municipalities compare their development charges to those in the GTA municipalities and they think we should be charging the same thing. The fallacy in this thinking can best be demonstrated by the following example:

If you were to take a 40-foot lot in the GTA at a per-frontage-foot sale of \$2,500 per lot, the total lot cost would be \$100,000, with a development charge of \$15,000. That would represent 15% of the cost of the lot. In Niagara the same lot is worth \$900 per foot frontage, or \$36,000 a lot. If you were to use the same development charge of \$15,000, that would represent 42% of the cost of the lot.

In Niagara the actual development charge, on average, because as you know we're made up of many municipalities, is around \$7,000 per lot, or approximately 20% of

the total cost of the lot. If you say it really fast it doesn't sound too bad, but on top of that, if you add all the processing fees now, because the municipalities are charging a fee for everything including amendments, additions, changes, whatever, and park dedication costs in some municipalities these costs can be as high as \$4,500 per lot. These fees, combined with the development charges, would result in approximately a third of the cost of the lot. If you take this scenario one step further and you add in the rest of the costs, with land at \$8,000 a lot, servicing at \$15,000 and the soft charges we just discussed at a total of \$11,500, that results in a total cost of \$34,500, not including profit and carrying costs.

I've rounded these numbers out for simplicity's sake and they vary from municipality to municipality, but in general they're relatively close. You can see that the difference between the \$36,000 and the \$34,500 doesn't leave a lot.

One of my other concerns is transit. It was interesting to hear what I did when I walked in on the last presenter. I have some real concerns with transit in Niagara. If transit is included in the development charge, I could see the region looking at it on a regional basis. I already see buses in St Catharines and Welland driving around empty. My real concern is that they're now going to be driving between Welland and Fort Erie and Port Colborne empty. The low ridership and the high costs to maintain a transit system could result in a further substantial increase in the development charge in Niagara, so I have a real concern about transit. I'm trying to make the point here that Niagara is different from the GTA.

There is a great concern in our industry that we're already at a break-even point. I have clients who are developing their land and trying to sell the lots just so they can get rid of the land because it's killing them to carry it, not because they're making money on the land.

I have concerns. I've got an example of a development charge that was just passed in spite of the fact that there's a moratorium on new charges. In their brand-new bylaw they have charged for roads, bringing them from rural to urban standards; nothing to do with development, not development-related at all. These are the kinds of things that the old act seemed to allow. Maybe legally it didn't, but they still did it.

Those are the points I have. I don't think I took half an hour but I'd like to thank you for providing me the opportunity to air my thoughts and concerns. I hope you will seriously consider some of the points I've made today. As I say, I was shocked last night. I had this thing half-written. I had to change some of it because I realized for the first time that the government was thinking of getting rid of the 10%. I don't know what to do. I don't know how you're going to make these municipalities toe the line, because they think this development charge is a developer's credit card and they don't have to pay the bill.

Mr Hardeman: Thank you very much for your presentation. First I want to go to the issue of your concerns with equality between the GTA and Niagara region and your analysis that if development charges were the same it would be unfair in Niagara because of the different values in the two areas. My concern is, why

would we, or do we in this bill, assume there is anything in there that would imply that municipalities could set their development charges based on what is being charged in the GTA?

Mr Hodge: There probably isn't anything there that implies that, but they do it. It's just human nature to look at your neighbour and see what he charges. If he charges more and there's the possibility that you can get more when you're already struggling to keep your taxes to zero — as we've heard, they've been very successful at it. Part of the reason is that they've been charging the development charges and applying the costs to existing services.

Mr Hardeman: But you would agree then that if there is accountability built in, they have to, first of all, justify what they're charging for, and second, they have to account for the money they charge, that it is being expended where it's supposed to be, that this would solve that concern.

Mr Hodge: It would. My concern is, how do you make them accountable? Making the taxpayers watch them is a good way to make them accountable.

Mr Sergio: They are now.

Mr Hardeman: The other issue: When the minister made his presentation Monday morning concerning the bill, he mentioned that he would be recommending that we remove the 10% payment on behalf of municipalities for what he called the hard services. One of the reasons he gave was that these are very difficult to gold-plate. Obviously, if development is going to pay for the cost of development, you can't put in 90% of the sewer pipe; it has to be the whole pipe. Municipalities tend to do that in a most cost-effective manner, so he felt that it wasn't as important, that further accountability was built in that as there would be in the soft services. Would you disagree with that?

Mr Hodge: Based on my past experience, yes. I think they can gold-plate anything. They can gold-plate a sewer as well as they can gold-plate a city hall. You just put more bedding; you increase your standards.

Mr Hardeman: The other issue was more from the previous presentation — I believe you were present when it was done — when they talked about the 30% and that it was very important that it was left in but it wasn't critical whether that was a copayment or a discounting. Obviously the discounting portion of that is different from a copayment. When they've set the charge and they can provide it for 30% less, they would not have to put any municipal contribution towards that. Do you see those two issues as being the same, as the previous presenter did, or do you see that it's important one way or the other that they be differentiated between?

Mr Hodge: You know, Mr Hardeman, I haven't really thought about that. My first reaction is that it stay the way it is. I have some concern with the municipality being able to say they've contributed something that would keep the cost of it down and that would be their share, again based on past experience.

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Mr Hardeman: Municipalities have come forward and told the committee that they have real concern with the copayment if it doesn't include the discount. If the study

is done and it says they have the right to charge \$100,000 divided over a number of homes for a service, and then they can provide that for \$70,000, they should not then be obligated to provide 30% of that \$70,000; they have reduced the level of service or the cost of that service.

Furthermore, some municipalities, and this is particularly true in the Niagara region, where they've done their studies and they have the right to charge a considerable amount of money more than they're presently charging, don't feel it's appropriate then, when they do that, that they also have to make up a percentage of that lower amount when they actually construct the facilities. Do you have any comments on that?

Mr Hodge: If it's done fairly, I don't have a problem with it. My concern is that some will do it fairly and others might tend to abuse it.

Mr Ouellette: You mentioned accountability. This was brought up on Monday and I think it was an interesting point. I found it so, anyway, so I'll mention it again. Do you think it would become more accountable if the end user, being the purchaser of the property, were to pay the development charges to the municipality as opposed to having the developer pay them?

Mr Hodge: Sorry. Say that again.

Mr Ouellette: The home purchaser pays the development charges to the municipality as opposed to the developer paying them. The developer is just the middle person. Would that make it more accountable?

Mr Hodge: Yes, but it's after the fact. He doesn't have an opportunity at that point in time to say: "Wait a minute, I don't need all those services." It's done. It's a done deal.

Mr Ouellette: So you're saying it wouldn't make it —

Mr Hodge: I don't think it would. I think it's too late.

Mr Ouellette: Well, they would certainly have to justify the cost, I imagine.

Mr Hodge: You might have one guy at the counter at a time screaming upset sort of thing. I don't know. I think it's too late, though, at that point.

Mr Gerretsen: I get a little disturbed when I hear all this talk about accountability, as if municipalities aren't accountable at all. After all, they face elections every three years and it has been my experience that the development and housing industry probably finances more local campaigns than any other one single group. I'm not saying that necessarily in a negative sense, because I've had the benefit of that over the years as well, as have others who are probably sitting around the table.

Interjection.

Mr Gerretsen: Oh, you don't really know, Gilles; maybe you have.

Surely the ultimate accountability is at the ballot box every three years. The last comment that you made you somehow seemed to back away from it a little bit by saying, "Well, yes, some municipalities are fair and some aren't." I would suggest to you that some developers deal with the municipality in exactly the same way. Some of them come straight up front with an idea and with a sense of fairness, and others try to take advantage of a municipality whichever way they can. I can give you a few examples of that too if you'd like. I don't know

where it gets us by dumping on one group and saying: "These people aren't responsible. The municipalities don't know what they're doing." Is that the way we should be building laws or rules and regulations?

Mr Hodge: Probably not. I have a problem with that too, I must admit. You're absolutely right. If you look at today's subdivision agreements, they're probably this thick, and it's as a result of one or two bad eggs and not the whole basket. It's unfortunate that we have to do that.

Mr Gerretsen: Exactly, because you and I know there are subdivisions that were built in the 1960s that were built very substandardly, with not enough of a road base, not enough services put in the ground etc. Who's paying for all those services right now? The municipal taxpayer, because somebody didn't play the game in a fair way a number of years ago. All I'm suggesting is that it works on all sides.

Mr Hodge: I'd like to address your question on accountability, because I'm not sure the accountability issue works at the voter level when it comes to development charges. It probably works in favour of the politicians, because the more development charges they can collect the better off they are and the lower they can keep their taxes, which makes them look good to the voters. If they were all developers instead of taxpayers, then you're right, there would be accountability, but they aren't; only one or two or half a dozen are developers.

Mr Sergio: I have a question also for you. Last week during the last rainstorm, 90% of the homes in your neighbourhood got flooded basements. This is not the first time. This has been happening practically every time it rains. You living in that subdivision there, you're fed up and you call the local councillor and you call the mayor. They allowed a subdivision to be built a mile up the street from where you live knowing full well that the new subdivision didn't have full sewer capacity to absorb the 200, 300 or 400 homes, whatever. Now you're suddenly very upset with the mayor and the local councillor; you want something done. The sewer capacity has to be increased in your community. Otherwise, you're going to get a flooded basement every other day it rains. Who is going to pay for that?

Mr Hodge: Let me address the concern first, because not knowing exactly the situation you're talking about, I do know of several situations that sound the same but are as a direct result of increased standards by the Ministry of Environment getting rid of all of our sewer overflows. So every time it rains now, we have problems. I ask you, is that the responsibility of new development? I'll put it back to you —

Mr Sergio: I also said in my question that you knew it, the mayor knew it, the local councillor knew it, that they allowed a new subdivision to be built with undersized services. That established community has to pay because of the consequences of building a new subdivision. What I'm trying to say with my next question is, if your new site infringes on the abutting community there, who should be responsible for providing the necessary services so the established community does not suffer the consequences of an extra 500 homes up the street?

Mr Hodge: I could take a long time to answer that.

Mr Sergio: Well, give it a try.

Mr Hodge: First of all, and it was discussed with the last fellow as well — actually, Monty is sitting back here, and he and I were discussing this upcoming meeting. I said to him, "Well, gee, you know, I have a hard time going in front of that committee when I really don't believe in development charges, the philosophy of it period." Monty said to me: "Well, it's kind of like the genie is out of the bottle. You're not going to get him back in. Let's just try to limit him to three wishes."

Development charges, in my opinion, quite honestly, are an unfair tax on the new home owner. I can get into this philosophy if you like. My father paid taxes for new growth, and as a result of it, my house was cheaper. My kids are going to pay more for their housing because we're putting a special tax on.

Mr Sergio: So you're just a collector, right?

Mr Hodge: Who?

Mr Sergio: You, a developer. You're just a collector.

Mr Hodge: I collect it and pass it on. Absolutely.

Mr Sergio: Exactly.

Mr Hodge: With no opportunity for the fellow who pays it to have input as to how much it has cost or what it's for. None.

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Mr Sergio: Is it fair for you to pay now, let's say, part of \$2 million because the city has to improve services? Is that fair?

Mr Hodge: If it's development-related under the act, absolutely. Not a problem. I don't have a problem with that. Look at this. Most of this one, and I can show you several others, goes for nothing other than fixing existing services.

Mr Sergio: You never got a flooded basement until they built 1,000 homes a mile from where you are, because the sewer capacity is not enough. Why should you? That's the point.

The Chair: Excuse me. Mr Pouliot is anxious for his time.

Mr Hodge: I could give you another example. We just built a brand-new subdivision. The basements flooded.

Mr Sergio: In the new subdivision?

Mr Hodge: New subdivision. The town's existing sewer was draining half the creek. The pumping station couldn't take it. Is that the new development's fault?

Mr Pouliot: Can we get out of the sewer? It's my time.

The Chair: Go ahead, Mr Pouliot. You have the floor.

Mr Sergio: There must be something wrong if it's a new development.

Mr Pouliot: Mr Hodge, my colleague mentioned being the recipient of a political contribution. I have never —

Mr Froese: You've never gotten one.

Mr Pouliot: When my phone did not ring, Mr Hodge, maybe it was you calling. I managed to survive four elections. A much-maligned group they are, the women and men who serve at city council. There are more than 800 municipalities across the province, and you know many of them, I'm sure, through your expertise. I too, because of this, have had the same opportunity for travel to many of the municipalities. What I see is a desire to meet the standards, and those standards do change; it's evolutive. What I see is good, by and large, basic service.

Gold-plated? We're not talking about an MP's or an MPP's pension here; we're talking —

Interjection: Not ours.

Mr Pouliot: Not ours any more. We're talking about basic service in municipalities. You've mentioned, and I'm quoting verbatim, with respect, "I don't know how the government will make the municipalities toe the line." Well, they're about to toe the line big time, because within a year's time they will be responsible for a range of service. The portables that were to be temporary, is that gold-plated? Miss Jones, who needs medication and who has to wait three months for a hip replacement, is this gold-plated? The list goes on and on, Mr Hodge. So when we impute motive, when we say, "I'll show them how to tighten up their belt," and we go and see them and they give us the assurance that they've already gone beyond the call of duty, what more?

Would you be better off if it was called a tax, not a development charge? Would that make you feel better? For instance, a building permit would cost you the same amount of money as a development charge. Would you feel better? By way of a question, sir, what assurance do I have as a consumer that all of the benefits will be passed along to the marketplace so I, the consumer, will benefit from the lack of development charges at the builder's level?

Mr Hodge: I guess the same assurance you have when you go and buy a suit or a toaster or anything else: the market itself. I'm not suggesting to you for a moment that developers, toaster makers or tailors shouldn't make money. I have to eat, you have to eat; I've got children —

Mr Pouliot: Stop there.

Mr Hodge: Stop there? Okay, sorry.

The Chair: Thank you very much, Mr Hodge. We appreciate your taking the time to come before us and answer questions and present your views.

Mr Hodge: Thank you for the opportunity.

MOUNTAINVIEW HOMES LTD

The Chair: We would now like to welcome Mountainview Homes, with Mr Basciano, please.

Mr Monty Vandeyar: Madam Chair, Mr Basciano has not been able to appear here today. I'll speak on his behalf.

The Chair: That's fine. Please make yourself comfortable. Introduce yourself for Hansard record, please.

Mr Vandeyar: My name is Monty Vandeyar. I'm a practising solicitor in this area and the in-house counsel to Mountainview Homes, and as such, I've been actively involved in the company's response to the many bylaws that have been enacted under the Development Charges Act in the Niagara region. I have to say that I have found quite a lot of the bylaws deficient, not because the act purposefully is misguided, but rather, the way it has been implemented seems to be the problem.

I would like to start by thanking you for allowing us to present our views here today and having this hearing in this area, because it allows us an opportunity to tell you exactly how we feel about the present act as it is and what the new bill is likely to do to it.

By way of introduction, let me also say that Mountainview Homes has been a developer and a builder in this region since 1979 and presently has several undertakings under way in at least nine of the 12 area municipalities. I can proudly say that it is indeed one of the largest home builders in the region.

At the very outset of my submission let me clearly state that Mountainview Homes supports the development charges as a means of allowing the municipalities to recover the costs they incur to provide services resulting from new development. Prior to the enactment of the Development Charges Act in 1989, our company recognized the growing demand for services such as neighbourhood parks in the areas we were developing and the inability of the local area municipalities to respond to those demands. As a result, we have of our own accord paid for neighbourhood parks in the city of St Catharines, in the city of Thorold and made substantial capital contributions in the city of Thorold towards its library service. Very recently, we made some \$32,000 as a contribution for the improvement of a neighbourhood park in the town of Lincoln.

At first, when we looked at the Development Charges Act in 1989, we saw it as a means of bringing certainty and uniformity to a previous practice, the lot levy practice, as it was called, that seemed to vary from municipality to municipality and, not uncommonly, from project to project within the municipality.

Unfortunately for us, we find that municipalities have seized upon the broad wording of the present act to require the development community to pay for almost all their services, which they've set at very high levels, seemingly free of charge to the general taxpayer. Much to our chagrin, we've noticed that the Development Charges Act itself provides no explicit requirement for a municipality to exercise this right to charge a fee with any corresponding duty. By that, I mean the duty to provide only what is needed rather than what is desired; the duty to provide services at a reasonable level rather than the elevated levels it has chosen; and the duty to consider the long-term impact of maintaining and replacing those services that have been funded through development charges. In short, there seems to be no real mechanism in the act that would make a municipality accountable for either the range of services or the level of services it wishes to provide and the eventual impact this will have in operating costs to the general taxpayer.

To illustrate this point, let me relate to you a particular experience we've had with regard to the deficiencies in the present act. In 1990, we challenged a development charge bylaw in one of the area municipalities. This was a predominantly rural municipality with less than 17,000 people. We challenged this on the basis that this bylaw merely provided for soft costs, soft services; there was no attempt made to provide for any hard costs or hard services. This in itself was singularly shortsighted as an exercise. Nevertheless, we referred this bylaw to the Ontario Municipal Board on the grounds that the total charge that the development charge represented was high and incorrectly calculated. We argued that three of the service categories involved in the total eight were wrong.

If you talk in terms of the sum of the parts equalling the whole, if any part is wrong, therefore the whole has got to be wrong.

We argued at the municipal board, and the board held that the act itself did not require the municipalities to set out their charge in a component fashion, so that even if any component was wrong, provided the total charge was lower than what it might otherwise have been — on appeal to the Divisional Court, it upheld the board decision on the grounds that both the act and the regulations did not require the municipalities to set out in a break-down fashion various amounts that made up the charge.

Since then, I can tell you that this municipality has enacted a second-generation set of development charge bylaws that now awaits ministerial approval. In the meantime, these new bylaws represent probably the highest development charges in the region.

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As a result of our experience, we're now looking to Bill 98. It is our view that this bill appears to bring a needed measure of accountability to the way municipalities calculate the development charge that seems to be missing from the present act. We strongly support the provisions of Bill 98 in that it will obligate the municipalities first to contribute towards the cost of the services from the general tax base and it will also obligate them to confine their charges to a range of eligible services, obligate them to limit the services to a 10-year historical average and obligate them to consider the long-term impact of operating those services that were funded by the development charges.

Having said that, we do have some reservations about Bill 98 in that it does make provisions for an item called transit as an eligible service. This service is likely to be provided in the Niagara Peninsula by the regional municipality. This will be on a region-wide basis and the charge is likely to be a flat-rated one. Some areas have smaller populations in the Niagara Peninsula, and therefore not all of them will enjoy the benefits of the service because of the low per-capita use the service will provide them. In our view, if that is a comment we are allowed to make, the service is better financed through the general tax base and therefore should be eliminated from Bill 98 as part of the eligible list of services that a municipality ought to provide. Likewise, we say the same for solid waste. This service is better financed on a user-pay basis, and we believe that service on a use-pay basis complies with conservation too.

Having said this, we believe, and I say this very sincerely, that all together these changes will likely protect the future and the existing taxpayer and also lower any barriers that the housing market will have and render it reasonably affordable in the near future. Those are my short submissions.

Mr Sergio: Thank you very much, Mr Vandeyar, for coming down and making a presentation to our committee. I want to take you back to the four recommendations you have made that you think that municipalities should or shouldn't do. In (b) for example, "to confine its charges to a range of eligible services," what would you consider good services that a local municipality should

provide? What services would you include? A skating rink, let's say?

Mr Vandeyar: I don't think I would want to list them and say to you that these are the services that a municipality should provide and bury it in the act. All I'm saying is that the municipality, as it must in the bill, designate the services it will provide that it hopes to finance through the charge.

Mr Sergio: On (c), you're saying "to limit the level of such services to a 10-year historical average." I believe you would find most municipalities agree with that, provided — as you know, municipalities get their rations from Big Daddy.

What would happen if we have such an agreement in a particular municipality and they hold the line, don't build a new Taj Mahal, as it has been said, don't fix any more sidewalks or whatever? They have two things to do: either raise taxes to maintain the existing infrastructures or let them go, let the services run down.

What happens in the case where you have Big Daddy, the government, go to the local municipality and say, "I don't want to be responsible any more for long-term care, so, municipality, you look after it," or municipal housing or other infrastructures? What happens then to local municipalities? Where are you going to apply this 10-year average when you have a government that says, "Municipality, now you are responsible for providing all of that"? What are you going to do with that?

Mr Vandeyar: To try to answer your question, I believe municipalities presently offer a level and a range of services they can readily go back to and say, this is the level on an average 10-year basis. All I'm suggesting as a departure from that is that if the municipality is allowed, as somebody suggested here, though I don't like the term, to gold-plate it — let's say they did want to increase that level of service. That should be a decision that is made throughout the municipality and the cost should be borne from the general tax base, because nobody individually or no new homeowner alone is going to benefit by that improvement.

Mr Sergio: But I'm talking here about building nothing else; the municipality is doing nothing extra. But all of a sudden, out of the blue, we have a new election and a new government, and that new government happened to promise gold-plated whatever you want to call it to particular groups and now wants to unload on the local municipalities the expense of getting those dollars they promised to somebody else. Do you think the local municipality should be burdened with those?

Mr Vandeyar: The attempt I see in what you say is that there seems to be two sets of tax base here. There is the new homeowner, who apparently is not counted in the decision-making process. When he pays development charges, as you know, he sees it as a hidden tax that's built into the price of the house he buys. He has no say in that. To that extent, he is the silent taxpayer.

Mr Sergio: Yes, but I'm now talking about this 10-year average agreement, in which a municipality very diligently wants to listen to Big Daddy and says, "We understand what you want to do and it's fair, blah blah, blah" and they have this 10-year average. Then all of a sudden, out of the blue, they are getting downloaded from

an upper-tier government extra charges, which they were unprepared for, unbudgeted for, and all of a sudden that 10-year average has gone out of the window. What happens to that municipality? What happens to that 89-year-old woman or man who can't afford to pay extra for the downloading of responsibilities on the local municipalities?

Mr Vandeyar: If the infrastructure has to be maintained, I'm saying the burden is going to be — I seem to come back to what I thought was your question or your distinction. The taxpayers are always going to be the same, whether it's the new taxpayer or the old taxpayer. The new taxpayer pays two costs: He pays the initial capital costs through the development charges for having come into the community; then he continues to pay when he's in that community as the general taxpayer, so he's no different from anybody else. If the municipality is burdened, as you say, from the downloading, the burden is still throughout the municipality. It has nothing to do with the development charges or the fact that a new person has moved in. New development didn't cause the problem.

Mr Sergio: We understand that, but then the 10-year agreement is really not a valid argument, is it?

Mr Vandeyar: Oh, I don't think that's the case. I think the idea behind setting the limit is to say that if you have the right to charge, you should have the corresponding duty.

1520

Mr Pouliot: Mr Vandeyar, if you exclude — suffice it that the development charges are no longer the order of the day. A person is an established homeowner in the municipality and a new subdivision is being developed. The money obviously will, it is highly likely, come from the general purpose fund, will come from general taxation, so it would be fair to say that the established resident is subsidizing, is certainly contributing to, the cost of the new subdivision. Is that not the case if you don't have a development charge which is dedicated for that cost, if it's passed to everybody in the municipality?

Mr Vandeyar: With the greatest respect, Mr Pouliot, I believe, and my experience has borne me out on this, that every subdivider is called upon to develop his subdivision and has to finance the entire infrastructure within the subdivision. I think the services that municipalities usually find a burden are the existing services that have to be expanded as a result of new people coming in and using what's there. Development charges — if a road has to be widened, to the extent that the new people who have moved in have contributed to the demand for that service, they will be paying the cost.

Mr Pouliot: For some it's an ongoing challenge, which is the choice, subject to change, between user-pay and the collectivity, if you wish, that we're all responsible to one another. Examples abound. We're all on a waiting list of sorts, of course. If somebody hits a difficult time and ends up with a stay in the hospital, I think we all understand the need for the collectivity to get involved. We do that through our tax dollars and expertise. By the same token, if we don't use the ski hill or the curling club, we acquiesce, if not readily. You would certainly say: "If you use the curling club, maybe you should pay a little more. I'll pay part of the electricity

bill through general taxation" and so on. That's always difficult and it always changes, and I think that's okay too, to keep trying to reconcile the bottom line.

I have a question for you. You've mentioned downloading. Let's say municipalities are forced — the likelihood is real — to take on new and additional responsibilities. The reason I'm asking the question is because I'm concerned and nervous about standards, that if you don't send the cheque, you can have all the legislation and regulations you wish, but how do you maintain the standard when the cheque isn't in the mail or the ability is not there for local government to pay for the service? Is it not an invitation — without imputing motives — to cut corners where you can? Is it not a discrepancy between the services you will get in one place as opposed to the other? If you don't send the cheque, "What are you doing in my business?" That's the reaction. When people look at the standards, they say, "Now I'm paying for this, so please, I'll do it my way." Am I too bold? Please correct me if so.

Mr Vandeyar: I must say, I didn't quite follow the trend in which you — I don't want to attempt to answer a question I don't even understand.

Mr Pouliot: Do you want me to do it? Look, I came to this province to learn English and you embarrass me in front of my colleagues.

Mr Vandeyar: I apologize.

Mr Pouliot: Simply put, do you feel there is a risk that standards could be compromised?

Mr Vandeyar: I think there's a confusion. Standards are something that has been there. I'm simply wanting the municipality to maintain the standards they've had. I don't want them to increase the standards simply because there's now a new bounty appearing.

Mr Pouliot: Thank you. Now it's my turn. I read in your presentation — I'm supposed to learn English: "Likewise, solid waste disposal service is better financed on a user-pay basis that would encourage conservation practices." I'll never learn the language. Read that.

Mr Vandeyar: What I'm saying is that the solid waste, as a service, should be treated very much like the way I've suggested transit should be, because transit doesn't readily allow itself to be financed through development charges, in our view. We think it should be part of the general tax base. All taxpayers use it and therefore all taxpayers should pay for it, and if it was regulated on a user-pay basis, conservation therefore would be the first thought in all our minds.

Mr Pouliot: We already meter the water coming in. Now you want to meter the water going out.

Mr Vandeyar: They do it both ways anyway now.

Mr Galt: Thank you for the presentation. Sitting here observing this afternoon, your peers are staying here to hear your presentation. They had equally convincing presentations, and obviously supporting each other. What a shame that the municipal councillors, who made their presentations this morning and who were equally convincing in the other direction, wouldn't be here to hear yours. There was a bit of a discussion at noonhour that we should make sure that all delegations stay for the whole day. They can go through purgatory the same as us.

Laughter.

Mr Galt: But seriously, it's unfortunate that they're not hearing your convincing argument. One of the councillors was quite confrontational this morning in his concerns, and I think he might be a little less confrontational if he could have heard what the three of you were saying here this afternoon.

What's going through my mind as you've been presenting is that I'm thinking back to the original act in the 1980s that the Liberal government brought in, and understandably there was concern about lot levies at that time. I'm listening to the presentations over the last three days and I'm starting to wonder, is the Ontario government getting into an area of municipal activity and involvement that they should never have gotten into in the first place?

Mr Gerretsen: Absolutely. I'll concur with that.

Mr Galt: Your government brought it in, so I can understand why you'd concur with it.

I'm curious about whether, with supply and demand and one community lobbying to get development versus another, the Ontario government should have just stayed totally out of this or should get out of it now. I'm looking for your opinion.

Mr Vandeyar: I believe Mr Hodge thought, looking back on the old practice, the old lot levy practice, was perhaps the better way because we negotiated things on an area-by-area, project-by-project basis.

I suggested, and I believe Mountainview is of the view, that development charges brought some certainty and uniformity. That's what we want, because when we develop, these are long-range plans being made; we want to know what the bottom-line cost is going to be to us too. In order to do that, we wanted that certainty, but now that, like Mr Hodge has said, the genie is out of the bottle, what do we do? I, in a jocular way, suggested to him that perhaps we can restrict the genie to granting no more than three or four wishes.

What I was really getting at is that since we now give the municipality the right to levy these charges, we should give them the corresponding duty, like every right should have: How do you account to everybody for the power you now have? I am suggesting a mechanism which I believe is in Bill 98 already: Contribute some of it, and that way you'll have that ability to answer to the taxed public, be it the new owner or the old owner, because it's his money you're spending as much as the new fellow's. That is the point I am getting at.

If you'd keep them accountable for the level of service and nobody tends to overspend or decides to gild the lily, as they say, and let's get along with what we have, we can moderate things. That's the mechanism I am suggesting and looking forward to in Bill 98.

I am suggesting that we should have it go forward on that basis. I was a little concerned that the 100% recovery costs that I thought was going to be reduced to 90% in Bill 98 is now being rethought. We are a little concerned about that. I still think there should be some built-in mechanism that will make the municipalities think twice at least before they spend money or decide on a capital project.

Mr Hardeman: Thank you very much, Mr Vandeyar, for your presentation. You have the distinction of being

the last presentation today, in fact the last presentation to the committee before we go back to Toronto.

Throughout the hearings the last three days we've been hearing, particularly from the opposition members in their questions, the fact that any adjustment in the amount of development charges will relate to the municipality's ability to pay for the ongoing maintenance and services in their communities, that there is a connection between the realignment of services and development charges.

If that's the case, would you suggest that in municipalities where that is the case that it's an unfair taxation on the new home buyers; that because they're buying a new home, they're being asked to subsidize operational costs in the municipality? Those questions and types of statements would indicate that that is their position.

Mr Vandeyar: There has been an element of double taxation, if I may say so. When a new buyer comes into an area and pays the certain taxes I referred to, the development charges, he pays for it and that money is used for capital costs of whatever improvements are growth-related. He also, at the same time, is a taxpayer who is contributing to the general taxes, and unless that calculation in the development charges recognizes that and allows for it, you're right, he will be paying twice. He does pay twice, because he pays first for the improvement of the services that we say has been brought on because of his entrance into the municipality, and then he pays for it again as a general taxpayer. Yes, you're right. There are double taxes involved.

Mr Hardeman: Going on with that — I think Mr Sergio mentioned it — in the long-term care issue, if municipalities, through the realignment of services, start paying a part of long-term care, the facilities are already in existence. How would you see that development charges would impact that and why they should charge more development charges because they would have more operating costs in their general municipality?

Mr Vandeyar: The operating costs work something like this: First, we put in the services which are funded through the development charges, let's say, for example, a park. If the municipality in its wisdom decides it's going to have this very large sports complex, and it turns out that the need for that park diminishes as the years go by, the cost of maintaining that park, running it and just fixing it up, is going to be borne from the general taxpayer. That is the point I was making, that if we are going to plan ahead and spend this amount of money, we should keep an eye on the long-term costs that we will inherit. I believe Bill 98 does direct us in that direction.

What it says is this: It simply asks the municipality, before they embark on development charges, to have studies, to consider what the long-term impact is before they start putting in these services and charges.

Mr Hardeman: Just one final question on a totally different subject: In the region of Niagara we were told this morning the development charges are about 20% of the allowable amount. According to their study, they're charging 20% of that. Recognizing that, what do you see or how do you see the need for the change? What do you need in Niagara to make it fairer?

Mr Vandeyar: We would like to see some sort of mechanism, as I have constantly said, that will allow the

municipalities to measure why they are charging whatever they do. Having said that, from a business point of view, we're always looking to find out if costs can be kept at a lower level. This particular cost, as at least some of the committee members recognize, is actually a flow-through cost, so it's not something that resides with the developer but it will be reflected in the ultimate purchase price and it impacts on the affordability of homes and makes Niagara the viable area it might be.

All I'm suggesting to you is that this decision to increase costs, because we have other services to provide and there's been a downloading, is to confuse the issue.

We simply should tie it in and say if there is growth in an area and the growth is demanding these services, therefore the development charges must be a response to it, but it must be a measured response.

The Chair: Mr Vandeyar, on behalf of the committee members I thank you for coming today to make your thoughtful presentation. It is appreciated.

That concludes our presentations for this afternoon. We'll reconvene on Monday, April 21 at 3:30 in the afternoon.

The committee adjourned at 1534.

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Standing committee on resources development

Comité permanent du développement des ressources

**Water and Sewage Services
Improvement Act, 1997**

**Loi de 1997 sur l'amélioration
des services d'eau et d'égout**



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENT

Monday 14 April 1997

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Lundi 14 avril 1997

The committee met at 0928 at the London Convention Centre, London, Ontario.

WATER AND SEWAGE SERVICES
IMPROVEMENT ACT, 1997LOI DE 1997 SUR L'AMÉLIORATION
DES SERVICES D'EAU ET D'ÉGOUT

Consideration of Bill 107, An Act to enact the Municipal Water and Sewage Transfer Act, 1997 and to amend other Acts with respect to water and sewage / Projet de loi 107, Loi visant à édicter la Loi de 1997 sur le transfert des installations d'eau et d'égout aux municipalités et modifiant d'autres lois en ce qui a trait à l'eau et aux eaux d'égout.

The Chair (Mrs Brenda Elliott): Good morning, everyone. We'll start right on time. We have a busy day planned and the sooner we get started, the sooner we can listen to the delegates who come forward.

Mr Doug Galt (Northumberland): I wonder if we could have that door shut because of the noise coming in from the hall.

The Chair: That's probably a good idea, Doug.

I'd like first to welcome everyone. We're very pleased to be here in London to hear delegates come forward on Bill 107, the Municipal Water and Sewage Transfer Act. Certainly from the members' point of view, we're all well rested, bright-eyed and bushy-tailed and anxious to get going.

The first order of business this morning will be dealing with the subcommittee report, and I would draw your attention to the fact that we have two changes from our original plan: The hearings in Ottawa and in Thunder Bay have been cancelled essentially because there weren't enough presenters able to attend.

Could I have a motion, please, on the subcommittee report? Thank you, Mr Agostino. All in favour?

Mr Galt: Chair, that's subject to those changes?

The Chair: Subject to those changes. Opposed? Carried. Thank you very much.

ONTARIO PUBLIC INTEREST
RESEARCH GROUP

The Chair: We'll move on then and welcome our very first presenter today. It's Mr Robert Barron, who is here as a representative from the Ontario Public Interest Research Group. Good morning, Mr Barron, and welcome. Your presentation consists of 15 minutes — we're very strict about this, otherwise we get behind — and that will include your own presentation and questions from the three caucuses. The remaining time will be divided evenly.

Mr Robert Barron: Thank you, Brenda. Good morning, ladies and gentlemen of the committee. As my member of Parliament said, my name is Robert Barron and I'm delegating for the Ontario Public Interest Research Group at the University of Guelph. My particular working group is called the Clean Water Coalition, and our mandate is the study of water issues and how they are affected by environmental protection, naturalization and rehabilitation, locally and globally.

We've been very active in several different watershed studies recently, starting with the Hanlon Creek watershed study. We've just finished the Mill Creek watershed study and we're about to begin with Torrance Creek in the city of Guelph. We've also been active on the landfill search locally in Guelph, we've made presentations to the advisory committee on environmental standards on water quality in the Great Lakes, and we also made presentations regarding the aggregate extraction bill.

I'd like to begin this morning by reading out a consensus position for the Clean Water Coalition, my working group, and then I'll go on to discuss a specific example of my concerns with sewage privatization and then some comments about water privatization. I've submitted a copy of a videotape to illustrate what I'm talking about, about the sewage privatization in Guelph.

"Dear members of the standing committee on resources development:

"I am writing to express my great opposition to actions by the Ontario government that weaken environmental protection.

"The government has weakened or revoked 13 laws and plans to weaken over 80 regulations. Such changes will have serious, negative impacts on Ontario's environment far into the future. Every aspect of environmental protection is at risk, including controls on air pollution, water pollution, pesticides, waste disposal and recycling, urban sprawl, energy use and climate change, natural heritage and biodiversity protection, mining and forestry.

"Major rollbacks in environmental rules and citizens' rights have occurred alongside huge staff and program cuts in the Ministry of Environment and Energy and the Ministry of Natural Resources. The government has drastically reduced or eliminated its role in monitoring pollution and resource use, issuing permits for pollution activities and resource extraction activities, and enforcement of environmental protection laws. Many legal changes have also significantly reduced citizens' rights of access to both environmental information and to environmental decision-making that affects their lives.

"This massive environmental deregulation is occurring when public opinion polls have repeatedly shown that an overwhelming majority of citizens want strong environ-

mental laws, strictly enforced, even during times of recession or government deficit cutting.

"To add to this shocking record, the government is moving just as fast to sell Ontario's natural heritage. The privatization of forests is nearly complete. Cash-strapped municipalities have new powers to dissolve conservation authorities and sell the land. Provincial parks are on the chopping block, and fish and wildlife management has been downgraded from protection of biodiversity to the production of game species. With little input, the government is paving the way for the privatization by municipalities of our water resources. The private management of water will occur with weaker laws, fewer citizens' rights, huge cuts to programs to control water pollution, no provincial water conservation policy and no regulatory body to control these private utilities.

"This anti-environmental record will have enormous negative impacts on the environment and citizens' rights, and it has no support. I call upon you, on behalf of the Clean Water Coalition, to oppose any further environmental protection rollbacks and to insist that Ontario's green laws be restored and maintained.

"Yours very sincerely, Robert J. Barron."

Now, the first thing that I'd like to specifically discuss is the sewage privatization issue and an example which I experienced personally in the city of Guelph.

Several years ago, in 1995, there was a private project by an American corporation and it was located on property adjacent to the sewage treatment plant in Guelph. They had a project to try and develop composted sewage sludge as commercial fertilizer, and they were going to sell it.

What they found, however, was that it was so heavily loaded with heavy metals such as cadmium, lead, mercury, copper and other metals that it was not usable, and because of all the expenses they had incurred in developing this project, they went bankrupt. They walked away from the project, leaving a multimillion-dollar building that they had set up there, plus an enormous pile of sewage sludge sitting out in the open under the snow and rain, about a 10-foot-deep pile covering an acre of land there.

On February 19, 1995, I happened to notice it and I went in with my camcorder and I recorded the footage that I have submitted on the videotape. It shows that there was an enormous amount of sewage sludge which was, like I said, about 10 feet deep in places and it was running down the road like diarrhoea. It was going off road and down a gully into the Speed River.

I submitted this tape to the Ministry of Environment and a cleanup was ordered. Subsequent to that, the people of Guelph had to pay for this cleanup and had all the sewage sludge shipped over to the Eastview landfill site.

What concerns me is how long this had been going on and all of these heavy metals going into that water. The people down in Brantford and Dunnville get their drinking water out of that. Even more than that, less than a kilometre below this outlet there was a wildlife refuge and a waterfowl park. I'm wondering just what is going to be happening to those animals that are there, plus anything that's located along the river, just below the city.

It seems to me that what we have to do is to ensure that there is adequate monitoring of incidents like this, investigations and protection for the people of the communities. I don't think that under the proposed Bill 107 we're going to have that sort of thing happening.

One of the other things we're concerned about, because of different incidents that I've experienced around the city of Guelph, is that there's contamination of the Speed River from almost up to its source, near the proposed N4 dump site. Around the headwaters of the Speed River, a farmer has a manure holding tank which periodically overflows. In September 1991, I was walking by Guelph Lake and observed a very strong stench of cattle manure coming from the lake. As I walked along the south shore between the dam and Highway 24, I counted approximately 70 dying seagulls that were paralysed with the poison from the lake. They were dying.

I reported this to the Guelph Lake nature centre there that's run by the Grand River Conservation Authority. I never heard back from it. Apparently, it was just a volunteer person manning the desk there. I left a report of what I had found and no report was ever given back to me about what had happened there.

This was not the only occasion that this has happened there. Again, in I think it was August 1995, just following the Hillside Festival which is held at Guelph Lake, it was observed that there was some sort of purple dye in the water and there was also, again, the smell of manure coming from the lake. I again went around with the camcorder and I took some water samples, using some bottles from the Wellington-Dufferin health clinic to obtain the samples. What concerned me was that I got strong opposition from the health unit to even take samples and report all of this.

0940

I sent the samples across to the MOEE and heard back from them explanations which I really didn't think were very plausible. They seemed to think there was an anaerobic condition created on the bottom of the lake which was causing an algae which was causing this smell. My personal belief is that the manure had overflowed again, and it was causing a great big algae bloom and it was causing this smell.

Those are two personal examples that I've seen at Guelph Lake and at the sewage treatment plant in Guelph that concern me very much and illustrate the sorts of concerns.

One other point is that the city of Guelph is getting the summer games for next year and they're proposing using Guelph Lake as one of the places for some of the activities. I think we should look into the safety of that place, for one thing, if they're going to do that.

That's basically what I had to say about the sewage privatization.

The next thing is water privatization issues. I and everybody else in the Clean Water Coalition believe water facilities should be maintained as an essential public service for the sake of public health and safety, to provide equal access and affordable access to essentials of life, basically. You can't go more than two weeks, I think, in a temperate climate without water or you'll die.

so this is really an important issue, to keep access open to people on that.

What I've learned from the example over in the United Kingdom is that their problems were that once privatization had taken place, there were large increases in the rates — people were getting off because they couldn't, basically, afford the rates — and they had some health problems occur, such as dysentery, hepatitis A and a couple of other diseases. I think it was either typhoid or something like that which occurred. There's also the potential of cholera infections being spread if they don't have access to water for sanitary conditions.

I think those sorts of things are in the making here because of some problems that I've observed, again, in our locality at Guelph. Some of the water supplies may be contaminated by septic systems around. If they are contaminated, most of our ability to clean that up will be severely affected as far as the ability to monitor it, to inspect it and to do an investigation afterwards is concerned. So I'm really concerned about the water privatization as an essential service that we must maintain for the people of this country.

That's basically all I had to say about this. If you have any questions, I'd be prepared to answer them now.

Mr Pat Hoy (Essex-Kent): Thank you for your presentation this morning. Your main concern appears to be one of monitoring and inspection. You touched a bit on the conservation authorities. In my area, the conservation authorities play a great role in some of the aspects that you've talked about, and they have experienced cuts to their operations of 70%. Do you feel that they will be able to provide the proper monitoring that you're talking about in the future?

Mr Barron: No, I don't. One of the things that I've talked about with a member of the Eastview landfill public liaison committee touches on testing water. She mentioned to me that they've found out that since this is going forward and the public facilities for testing water are being shut back, the private facilities they're going to have to go to — the cost of all of the tests they formerly did is the same as only two that the private facilities are going to be doing. We're concerned then that there would have to be probably an increase in tax rates in the cities to try to keep up with it.

I think for the sake of their efficiency they're going to try and do less testing. I think as well as the conservation authorities being cut back so that they're not doing so much, we're also seeing that cities themselves are not going to be able to do so much unless they have a drastic increase in taxes. I don't think the city of Guelph particularly wants to try to do that.

Mr Floyd Laughren (Nickel Belt): I just want to make a comment. In view of the cutbacks in the Ministry of Environment, I think they should put you and your camcorder on the payroll.

Mr Barron: I second the motion.

Mr Laughren: I think you seem to be uncovering what they should be doing. I'm also worried about Guelph Lake. That could be very heavy rowing for those athletes, so I share your concern.

Mr Galt: Just a quick comment about Bill 107. You're concerned about privatization. We too are concerned

about privatization and that's part of the reason for Bill 107. It's all about who does what and to get the responsibility in the right place. Municipalities today could sell and privatize with no problem. Seventy-five percent of those who own water and sewer plants have not privatized to this point.

With this bill, those 230 plants that will be transferred to the municipalities, or any of the plants that municipalities own, including the 230 that will be transferred, will have to pay all the subsidies or grants given to them by the province since 1978. That is certainly going to discourage them from going to sell them off to some private industry in the future. To put your mind at rest, this is not about privatization; this is all about who does what and who should have what responsibilities.

The Chair: Thank you very much, Mr Barron, for taking the time to come before us this morning. Unfortunately, the time has expired, but we're very pleased to hear your point of view.

I would just point out for the members of the committee that the video Mr Barron referred to is here with the clerk and it will be available for anyone who has an opportunity to view it.

LONDON AND DISTRICT LABOUR COUNCIL

The Chair: Our next deputant this morning is Mr Gil Warren, representing the London and District Labour Council. Welcome.

Mr Gil Warren: I welcome you all to London. Since the filibuster is over, I hope you all stay awake during my presentation. I hear people have been working overtime for free lately. I have a controversial presentation, though, so I think it'll keep you awake.

Good morning from the citizens of London. My name is Gil Warren and I am here today to speak on behalf of the London and District Labour Council. I am a member of the environment committee of council and a long-time environmental activist in London. Our labour council represents over 25,000 members, including auto workers, teachers, brewery workers, grain millers and your own Ontario government employees.

The London labour council is opposed to Bill 107. This bill must be withdrawn. Bill 107 is part of a cynical attempt to dump provincial water assets on to the cities. Provincial funding has been slashed. The sale of all water and sewer assets to large private corporations that will create unregulated monopolies is just around the corner.

One hundred years ago London was the home of Sir Adam Beck. Beck was a prominent Conservative politician who founded Ontario Hydro. The corporation started out as a cooperative owned by the cities of southwestern Ontario. Hydro eventually became a crown corporation of Ontario because it was realized that public power was a vital province-wide concern. Hydro was set up to prevent the US robber barons of the day from gaining monopoly control of a very important community resource.

My question to the committee is this: Why is it that Sir Adam Beck realized the dangers of unregulated private monopolies and you do not? Why is this government's thinking a throwback to the Victorian ideas of the 1850s?

The committee says we don't have to worry because the price will be too high to pay for these if they have to

reimburse the province for the money put in since 1978. I would argue that you've just raised the price so that only large multinational corporations can buy private water systems. You say you are moving us forward into the future. The reality is that advisers to the Premier like Tom Long and David Frum are sending us back into the nasty past that was rejected in 1900 by Sir Adam Beck.

Bill 107 is not an act to improve water and sewers. Once again we see the Orwellian spin doctors of Bay Street trying to tell us you are improving things when in fact you are destroying things. Power and water are symbols of our sovereignty as a nation. It makes us very angry to see Bill 107 setting the stage for our water to be piped over the border by corporations of the United States.

The privatization of water is opposed by a majority of the people of Ontario as well as the labour and environmental movements. The privatization of water failed miserably in Thatcher's Britain, as it would in Ontario. This government says it can carry out privatization but prevent a repeat of the British failure. This is either a naïve attempt to tinker at a process you really do not understand or a cynical attempt to con people.

If the British example is not bad enough, look at what happened when public utilities were privatized in Mexico under Salinas. Greed, corruption, insider trading, political payoffs and finally murder were the legacy of the Salinas selloff. Let us not let Ontario be the Mexico of the north.

Your government says the municipalities want all this new responsibility of running water and all the other services that you are dumping on them. Most city politicians have figured out your game and do not want to play. There is no way the cities can handle all these downloaded responsibilities. The only solution is to either raise local taxes or sell off assets. If the water system is sold, it will be local government that takes the political heat from an outraged public. You are really just doing this to finance your tax cut to the wealthy while you dump the political cost on to the cities.

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The London labour council is also opposed to the union-busting implications of this bill. Workers are entitled to decent-paying, secure jobs. You say we have to prepare for globalization. We say we are sick and tired of hearing this hackneyed cliché.

It is very curious to note that in the European political debate the term used is the "neo-liberal agenda." That is much more accurate, because "neo-liberal" means 1850s Europe, and that is where this government is taking us.

What we really have going on here is the integration of the Canadian economy into the US trading bloc. This is the Americanization of our economy and you are willing accomplices.

Let us look at your proposal to bust unions among water and sewer workers from the perspective of the auto workers in our labour council. There are 5,000-plus members within our labour council, and then there's the auto parts industry. The biggest cost of water and sewer services are the energy costs to do the pumping. Labour costs are a very small component of total costs. Therefore, the small alleged savings, which haven't even been proved, would be counteracted by the need for a large

profit, big executive salaries and paying off borrowed money. Our citizens will lose in this scenario as well as the workers.

The other big concern in this pay race to the bottom is that a poorly paid water worker will no longer have the income to buy the new car that is made by our auto workers here in London. This is the big flaw in your economic assumptions. We need more demand for our products from ordinary, well-paid government workers.

Many economists, including another well-known local person, John Kenneth Galbraith, are now arguing that giving the wealthy even more money is a very stupid way to help the poor. If the wealthy have more money, they are not going to buy a new Ford or GM car; they already have a BMW. The money is much more likely to be invested in some harebrained overseas speculative mining venture like Bre-X, and then we get another stock crash and a currency and interest rate crisis just like Mexico.

We now turn to our concerns about some of the local implications of Bill 107. Our drinking water in London is piped in by two large pipelines from lakes Huron and Erie. This provincially owned system serves not only London but St Thomas and many other smaller towns and villages. Who will dominate if this system is down-loaded? The answer is London, and this should be of great concern to the smaller communities.

What if the Lakes Huron and Erie pipelines are sold to one of the darling companies of this government, Laidlaw or Wackenhut? There is an immediate loss of public ownership, control and accountability that formerly existed when it was owned by the province. This is yet another attack on democracy by this government.

The final insult is that this bill fails to provide a public, regulatory body to control the private sector monopoly that has been created. You have also laid off thousands of Ministry of Environment workers, which also greatly reduces our protection.

A final word about another one of your favourite ideas: user fees. Our labour council opposes user fees. These fees punish the poor and reward the wealthy. Let us give you a water-related London example. Thanks to you allowing user fees, London now has sanitary sewer and storm water user fees; there are two fees there. That's on my water bill every month when it comes.

Two powerful London institutions — the University of Western Ontario, our biggest water user; and the London Health Sciences Centre, Victoria and University hospitals, which recently merged — were exempted from the fees. Why? Because big corporations can always use their insider connections to lobby local government.

The bigger you are, the more powerful you are. With power, you have the money to hire an expert to argue that you should be exempted from a user fee. This infuriates the average citizen, myself included, who not only has to pay our sewer-using fees but also those of the freeloaders.

My neighbours and I, if we have money in our pockets, can spend it on "job creation" in the same way as a major institution. Is it not ironic that UWO also claimed that it should be exempted from the user fees because of the funding cuts caused by your government and the federal Liberal government?

The privatization of the management of publicly owned water systems is already happening in southwestern Ontario. Last year, the Middlesex township of Ekfrid contracted out its management. We see this as a first step towards privatization of ownership. The management firm gains firsthand knowledge of the waterworks and is then in a much better position to buy it.

A further concern is public waterworks that have built up a prudent reserve fund to cover the costs of repairs and infrastructure replacement. Does this reserve fund then become an asset that is coveted by a hostile corporate takeover?

Is a desperate, cash-strapped township, due to your downloading, going to have to sell its waterworks at a fire sale price with a big cash reserve? This sounds like the Ontario government snowplows you sold for \$1 each. This sounds like former Saskatchewan Premier Grant Devine's sale of earthmovers for \$1. Please, no more fire sales at our expense.

The London and District Labour Council has many other objections to this bill, but we would like to use the rest of our time for questions. Thank you for taking the time to come to London and for hearing our concerns. We hope you will act on our concerns, if you hope to get re-elected. By the way, your support in southwestern Ontario has fallen to 37% in the last poll. That's the end of my presentation.

The Chair: Thank you very much for your presentation. We have about five minutes remaining, and we'll begin with the third party.

Mr Laughren: I appreciate your presentation. I think your points about the downloading need to be re-emphasized. While municipalities may not, by nature, want to privatize, when the downloading hits them they will have no choice. In my own community the net cost of downloading in the regional municipality of Sudbury is \$105 million — net; that's after education taxes have been removed. That would in effect double property taxes in the regional municipality of Sudbury. It's not that municipalities necessarily want to privatize; they won't have any choice by the time this government gets finished downloading.

I wanted to ask you about the whole question of privatizing part of a water system. That really intrigued me. You've got a water system that's linked up to different communities, and I don't understand how you cut that in two. If the London water system is privatized, how does that affect the rest of it, St Thomas, for example? Do you have any idea how that would work?

Mr Warren: It's confusing to me how that would work in any kind of equitable situation. London is the dominant municipality around here, with over 300,000 people, and it would seem to me that if a joint system is downloaded to the municipality or privatized, it will end up in the control of the dominant community. That's a great concern we have.

There are small municipalities of 1,000 people drawing water off the pipelines, and how they're going to have any political weight in a scenario where London is so dominant — I don't think they will. How would they divvy up the ownership? Does the little village of 1,000 have a per cent ownership or does it have no ownership

of it? It seems to me that it's much better to leave it in provincial hands and to exercise a role by the provincial government of managing a regional resource.

Mr John O'Toole (Durham East): Thank you for your presentation and for your welcome to London. I want to make three points, really. On the bottom of page 2 you suggest that most politicians or most cities don't want any part of this. The information I have is quite the contrary: 75% of the municipalities own them today, and of the rest, there's quite a lineup, a list of municipalities over the years that have been requesting this change. I bring that to your attention.

Second, on page 4 your economic argument is not completely balanced in the first paragraph, and I'd like to talk to you about that. In the second-last paragraph on page 4 you talk about a "private sector monopoly." I'd like your comments on a public sector monopoly which perhaps exists today. I'd ask if you think that the current fees paid for water usage are not user fees. How else would you describe them? There's a base fee and then there's a user fee based on some kind of consumption rate or discharge rate.

Finally, I wonder if you think we should be charging the hospitals these fees. With public service institutions like universities and hospitals, which are publicly funded, should we be also churning the fees through to charge the hospitals so we divert the health care dollars to sewage and water treatment as opposed to patient care?

Those are three or four things for you to think about that I find exception to in your presentation.

Mr Warren: To make a point on the last one, the hospitals, as part of their operating budgets, should have the money to cover whatever taxes or user fees they have to pay. The argument that you guys make about user fees is that they're designed to encourage conservation. If the largest single water user in London gets off, they're not going to have any incentive for water conservation.

I think linking the argument of water conservation and user fees together is inaccurate in the first place. You don't say that hospitals should get free gas from the private gas company because it's a public institution. You say they should pay the market rate like everybody else.

No, I think the hospitals or universities should be paying a user fee. I'm opposed to user fees, but if user fees are in place, then everybody should be paying. The system is different here in London from what it used to be. You used to pay for water on the basis of how much water you consumed. Now we're paying sewer charges, a sanitary sewer charge and a storm sewer charge, and that has dramatically increased the price of water, to me, in the community. In fact, if you figured that into the tax increases here in London, municipal tax increases are about a 7% increase, not a 1% or 2% increase, because of those user fees that have gone into place around water.

I'm not sure what you're disagreeing with me on about the economy and that sort of thing, and we're probably running out of time on that. But in terms of the municipalities, a lot of municipalities were asking for a more flexible approach to the way the provincial government bureaucracy works. I don't think any of us has a particular problem with that, but when you came along with mega-week, you dumped all these responsibilities sudden-

ly on to the municipalities. I don't think they asked for all these responsibilities.

Many municipal councillors in London have been speaking up against the downloading, including prominent Tory Conservative members of our city council and our school board, and they're saying that you guys have not thought this out, that there are going to be all kinds of problems. People who should have been your allies politically in this mega-week bill are not supporting you and we're seeing that in this region.

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Mr Dominic Agostino (Hamilton East): Thank you for the presentation. I think you had many points that are quite pertinent to what has happened and the purpose of this bill. I think you can't do it in isolation of just this bill. You've talked about the downloading, of course, which forces municipalities now to find ways, and the biggest resource they can privatize is water and sewers. There's not a lot of money to be made in privatizing a transit system or privatizing social services department, but there's a hell of a lot of money to be made in privatizing a water service.

Bill 26 also took away the one tool that citizens had to deal with this issue. Prior to Bill 26, municipalities had to hold a referendum before they could privatize water and sewer services. Bill 26 took that away from them, so basically it has opened the door to privatization, and clearly this move here, the slightest move now, will simply allow it to go ahead, as I think it will, simply as a result of the cash-strapped problem municipalities will face.

In your view, if municipalities go ahead and privatize not only the operation but actually selling the assets, the water, what will that do first of all to workers' wages who currently work under some pretty decent contracting conditions in many of those plants? Second, what do you believe it will do to the rights that taxpayers will have to pay once you have a private corporation whose interest will be the bottom line and not the public service of water and sewers?

Mr Warren: If the assets are sold, I think there will be a campaign to strip the contracts of the workers. There may be legislation that says there are no successor rights and that sort of thing. I think the workers are in serious problems here if they are privatized.

The other thing is, once you've created a private monopoly of something like water, which isn't like telecommunications where you can set up a separate system, it is a physical monopoly and it's going to be unregulated. That's the thing that really bugs us. At least with the pipeline system we've got now, it is owned by the province of Ontario, it's accountable to elected officials and there's some regulatory system there. With this proposal we've got here, there is no regulatory system at all. Any monopoly has to be regulated by the government.

The Chair: I'm going to have to interrupt, Mr Warren. Time has expired. Thank you very much, on behalf of the members of the committee, for taking the time to come before us this morning. We appreciate hearing your advice.

Mr Warren: Thank you.

The Chair: Is Mr Charsley here, please? No.

CITY OF LONDON

The Chair: We'll move then next to Mr Wernham. Mr Wernham represents the city of London.

Mr Ted Wernham: Good morning. I have with me this morning the city engineer, John Jardine, and also Bob Cooper, manager of water and sewer services.

The Chair: Thank you very much for introducing your colleagues. You may begin.

Mr Wernham: My name is Ted Wernham. I'm the chair of the environment and transportation committee of the city of London. I've been on council for 12 years and will be making our submission to you on behalf of the corporation of the city of London. I take it that you have the text of our brief in front of you.

The city of London very much appreciates the opportunity to appear before the standing committee today to offer its comments on Bill 107, the proposed water and sewage transfer act, 1997. As major users of facilities to be transferred from provincial to municipal ownership and responsibility, we have some suggestions for improvements to Bill 107 as it applies to area systems.

By way of background, the city of London receives water from two separate systems: the Lake Huron supply system and the Elgin-Middlesex water system. The Lake Huron water supply system was conceived in the early 1960s and was originally to be built by the city of London. An agreement was reached in 1964, however, whereby the Ontario Water Resources Commission which was the predecessor to the Ontario Ministry of Environment and the Ontario Clean Water Agency, took over the project and sold water to any municipality along the pipeline desiring water at a price based on the actual capital and operating costs. Since that time all costs have been recovered based on the volume of water sold and rates have been established accordingly.

Currently London pays for 95% of the water supplied by the Lake Huron water supply system. In 1992 the city of London entered into an agreement with Ontario to take approximately 50% of the water from the Elgin area water system, which is the primary system, and pay for the costs of the expansion based on the volume of water purchased.

The Elgin-Middlesex water system, which is the secondary system, consisting of the pipeline from St Thomas to London, and the addition to the existing pumping station and reservoir, were constructed in 1994 to provide water to London, and 100% of those costs are recovered from London through rates based on volume of water purchased.

Under the proposed Municipal Water and Sewage Transfer Act, the Minister of Environment and Energy would have the power to transfer ownership of waterworks owned by the Ontario Clean Water Agency to two or more municipalities. The city of London submits that the proposed act should include as part of the criteria relating to the minister's power that ownership, and all payments to which OCWA is entitled, should be transferred to the municipality or municipalities that in the past have paid for, or in the future will pay for, the cost of the system. If a municipality does not wish to assume ownership or if by agreement of the users it is more cost-

effective, a single municipality should be able to assume ownership.

From a financial perspective, a larger municipality may have the ability to refinance the outstanding debt at a more favourable rate to the benefit of all system users. The city of London also submits that the act should be amended to have the minister take into consideration, when making a transfer, the financial capacity of the various users of the system and award ownership accordingly.

Under the proposed act the minister would have the power, on a transfer of ownership to two or more municipalities, to establish a joint board to manage the works. The city of London submits that in an area system such as Lake Huron, where there is one very large user and a number of very small users, the management of the system should be the responsibility of the major user of the system even though other municipalities may have a share of the ownership. This would offer the following advantages:

(1) Planning: Administration and staff resources from the large user municipality would be available to provide planning for expansion of the system to meet the anticipated growth with the entire service area.

As an example of such a benefit, in 1994 the city of London staff actively participated on the technical review committee for the OCWA environmental study report for water supply to the city of London and area. All users of the system benefited from the water supply study, which led to the expansion of the Elgin area system to London, Aylmer and Port Stanley.

City staff were also significantly involved in a 1995 OCWA environmental study report for the partial twinning of the Lake Huron pipeline, requested by the city of London, which provided security to all users of that system.

(2) Operation: Operational expertise and maintenance staff are present in a larger municipality to support an efficient operation of the treatment plant and pipelines. Currently, city of London staff are the only municipal participants on the study team for operation and maintenance assessment of the Lake Huron water supply system. The city of London also provides the emergency repair personnel and equipment for both the Lake Huron and Elgin area and the Elgin-Middlesex water supply pipelines.

(3) Economy: An area water supply system will be more efficient and economical if a larger municipality with existing trained and technically qualified staff is responsible for the management of the system. Management of the Elgin area water supply system should be the city of London's responsibility as the major long-term consumer on the system. Management of a multi-user system by consensus, as suggested in the bill, is an impossible situation. A joint board would not make effective and/or timely decisions.

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In the event of a dispute with respect to the management of the systems, subsection 6(4) of the act provides that a municipality may apply to the Ontario Municipal Board for a resolution. The city of London submits that the proposed act should allow owner municipalities in the first instance to identify or prescribe the dispute resolution

process preferred by them as part of any ownership agreement they may reach. In the absence of this being done, the proposed recourse to the OMB could be used.

Under subsection 5(1) of the proposed act, the minister's transfer order would not be effective for at least nine months before the order takes effect. During that period, after notice to the affected municipalities, they have an opportunity to make written submissions concerning the proposed transfer.

The proposed act is silent with respect to the opportunity for municipalities to undertake any type of "due diligence" customarily present in a willing seller and willing purchaser situation.

While the city of London supports the transfer of ownership, the proposed act should expressly entitle a municipality or municipalities proposed for taking ownership of the facilities to investigate the condition and liabilities of the system or systems. Financial assistance should be available from the province for major rehabilitation of the facilities, if necessary, through such due diligence. The municipal assistance grant program has, in the past, provided grants for capital improvements. This will now be the financial responsibility of the municipalities.

Section 9 of the proposed act would permit the minister to require an owner municipality to continue to provide services to a person previously receiving service from OCWA under an agreement. The minister's transfer order may contain provisions governing payment for these services. The city of London submits that the proposed act should be amended to expressly allow an owner municipality to establish water rates applicable to such persons with the right of such persons to appeal to the Ontario Municipal Board where the rates exceed those that may be set out in the minister's transfer order.

Subsection 9(2) of the proposed act makes reference to the collection provisions of the Municipal Act and the Public Utilities Act regarding water and sewage services. The provisions of the two acts are not consistent. The city of London submits that the provisions of the Public Utilities Act should be amended to mirror the collection provisions of the Municipal Act.

Section 56.2 of the proposed amendments to the Capital Investment Plan Act, 1993, would provide, among other things, that if an owner municipality transfers ownership of any portion of the waterworks system or sewage system to a third party other than a municipality, the owner municipality is obliged to repay all provincial subsidy on the entire water system or sewage system, not just the portion being transferred. The city of London submits that the proposed amendments should be changed to limit the repayment by the owner municipality to the provincial subsidy on the portion of the system being transferred. The city of London further submits that, recognizing that systems age over time, a depreciation allowance should be calculated with respect to the provincial subsidy susceptible to repayment. The depreciation allowance should be based on an annual rate generally accepted for facilities of this type or on a volume rate.

In closing, may we express again our appreciation for the opportunity of presenting the comments of the city of London on Bill 107, and I suggest there should be a depreciation allowance on all politicians.

Mr Galt: Yourself included. Thank you very much. I just wanted to make a couple of comments, first on your opening remark that a municipal user fee is totally cost recoverable and that's how it's working here. That's the way we believe it should be working, so it's right on.

The other one I wanted to respond to is that, as it relates to multiple ownership, certainly that is open for negotiation. It's not a closed book as to how it's going to occur. There will be a nine-month announcement to the municipalities involved, with a six-month period to put in your thoughts and ideas on how you would like to see it happen and then a three-month period for the minister to make a decision. I would suggest that during those periods there will be ample time to discuss and negotiate and come up with a workable agreement on ownership that's practical to all concerned.

It's very unique here, where there's such a sort of elephant-sized usage along with some very small usages. That's going to have to be looked at very carefully so the communities with 1,000 people have some say and don't get misused, and at the same time the large municipality that's paying the elephant's share has a lot of rights as well. It's one that may be a little difficult to work out, but certainly the opportunity is going to be there to negotiate and work that kind of thing out.

Mr Wernham: We don't want to appear heavy-handed in our submission, but there are economies of scale that need to be considered here.

Mr Agostino: I want to follow up on the earlier privatization issue. As a municipal councillor, in view of what has happened with the downloading, with the extra costs municipalities will face and also this massive shift and dumping that's occurring, do you believe this legislation should have a clause or a prohibition form to make it very clear that municipalities cannot sell the water and sewer assets, or do you believe municipalities should have the power to choose and possibly sell and privatize the assets of water and sewer services?

Mr Wernham: On the issue of privatization, my personal opinion, and this is my own opinion, simply is this: that it is an area that should be considered. Whether there's action taken in that area is entirely up to the individuals involved. With respect, we at city council had this discussion just last week with another issue involved with the firefighters. Because we here at the city of London enjoy certain rights and benefits of our location and our size, we feel the legislation should be permissive in that regard so that the opportunity exists for individual municipalities to adjudicate as to what they think is best, given that certain municipalities don't enjoy those benefits we do.

We are not indicating to you that it is our position that there should be that opportunity for us at this time, but we would like not to be restricted from that opportunity in the future.

Mr Laughren: Mr Wernham, it's good to have a submission from a fellow politician.

I wondered about the last part of your presentation when you talk about the repayment of any provincial subsidies. I see your point about repaying only the part that's being transferred, but what's left out of this is the whole issue of interest over that period of time, and of

course there's a link between inflation and interest rates. I'm concerned that the person or the company buying this from the municipality, for an example, would, under your scheme or your plan, have to buy it at an appreciated price but without any consideration for interest over that period of time, and I wonder how you come to grips with what for me is a contradiction.

Mr Wernham: The issue you refer to is in the last part with respect to depreciation. We are simply, on the basis of considering the actual asset, applying a formula to it that should take into account any kind of assessment on the basis of what we've maintained should be a willing seller and a willing buyer. We're open to that consideration as well. It's our interest, of course, to make sure that as we acquire this from the province we pay a fair price, and in the interests of any future opportunity, it should also, if it's necessary to transfer ownership, take into account those things you've mentioned, which are entirely valid.

The Chair: Thank you very much, Mr Wernham. Our time has expired, but on behalf of the committee members, I thank you for taking the time to come this morning and give us your best advice.

Mr Wernham: Perhaps, Madam Chair, it would be more appropriate to say that our time's evaporated.

The Chair: Rightly so. Thank you very much.

Is Mr Charsley here now? No. Mr Coronado? Do we have Mrs de Grosbois, Mr Reffle and Mr Hatton from the Canadian Institute of Public Health Inspectors? Excellent. For committee members, we're missing two delegations and we're moving down to the 10:45 slot.

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CANADIAN INSTITUTE OF PUBLIC HEALTH INSPECTORS, ONTARIO BRANCH

The Chair: Thank you very much for coming this morning. We're not only appreciative that you're here to give us your advice, but we're also glad you came early, so you've helped us move right along this morning. We're very happy to see you. Welcome.

Mr James Reffle: Thank you very much, Madam Chair, members of the standing committee, for giving us the opportunity to present this submission.

My name is James Reffle, and I am attending as president of the Ontario branch of the Canadian Institute of Public Health Inspectors. Also in attendance are Judith de Grosbois, who chairs our healthy environments division, and Mr Brian Hatton, who is divisional director in Waterloo region.

We will be restricting our comments to the impact of Bill 107 on the inspection and approval process for private sewage systems, also referred to as onsite sewage disposal systems. We will also address the effects of the proposed amendments to the associated regulation for sewage systems. As you may know, public health inspectors, as employees of public health units, have been the traditional service delivery personnel for this service for decades.

The administration and delivery of the septic system program has profound effects upon both human health

and the environment. The Environmental Protection Act, or the EPA, was brought into existence to address the need for environmental protection in a province that was undergoing rapid growth. Prior to the EPA, protection of our recreational waters and supplies of safe drinking water, both private and communal, was sporadic in many areas of the province. Ponding of raw sewage and pollution of our natural environment created numerous hazardous conditions detrimental to human health. Public health units spent considerable time investigating and correcting conditions which spread disease potentially, such as typhoid, dysentery and salmonellosis.

The EPA was brought into existence upon formation of the Ministry of Environment and Energy to correct the inconsistencies and deficiencies of private sewage system inspection in Ontario. Because the MOEE did not have the personnel required to carry out the program, agreements were signed with local agencies, which were health units for the most part. The MOEE has retained the responsibility for approval and inspection of unconventional systems, and the approvals branch in that ministry is well respected and consulted on a regular basis for their expertise.

The Ontario branch of the Canadian Institute of Public Health Inspectors fully supports the direction in which the regulations are moving; performance-based regulations, standardized approvals and training and certification of installers and haulers will serve the province well, as will the removal of provincial subsidies so as to run the program on a cost-recovery basis.

We would like to point out, however, that before certification, students in the environmental health program at Ryerson Polytechnic University have had a minimum of 78 hours of classroom instruction in waste water technology and water technology. This does not include time spent in instruction in the field. The British Columbia Institute of Technology offers a similar program. In order to become certified as public health inspectors in Canada, the students must have three months of supervised experience in the field. If the regulations are not revised from their current form, Ontario will be in the unique position of being the only province or territory in Canada that does not recognize certified public health inspectors as qualified sewage system inspectors.

We fully support the recommendation for scheduled recertification for inspectors. Our branch has had a long history of providing annual in-service courses in this for public health inspectors through the University of Guelph in association with the Ministry of Environment and Energy. Advances in sewage technology occur slowly, so recertification could occur as infrequently as every five years.

There are also reservations concerning the proposed time line for bringing the new act and regulations into effect. Completion of training and certification of inspectors, installers and pumpers before October 1, 1997, is very optimistic, considering that the training and certification process and logistics have yet to be established. Weather conditions restrict program delivery to the months proposed for training and certification, and program directors will not be able to deliver the program if staff are not available. Essentially, if you're looking at

an October 1 establishment date for training of inspectors and installers, the training would likely have to occur during the summer and early fall, which is really the busy building time of the season.

The Ontario branch believes it would be advisable to revise the timetable, and a target date of March 31, 1998, would be feasible. This may coincide with both the end of the fiscal year for many of the businesses delivering these programs and some of the agencies as well.

Any legislation concerned with private sewage systems must balance health and environmental concerns on one hand with convenience for the public on the other. Because of the strong connection between untreated human sewage and infectious disease, the Ontario branch believes health protection and environmental protection must outweigh the other considerations.

Bill 107 transfers the responsibility of program delivery for low-volume, onsite sewage systems, those with flows of under 4,500 litres per day, to the lower-tier municipalities and to the Ministry of Municipal Affairs and Housing in unorganized territories. Upper-tier municipalities will be responsible for large volume systems, or those that are over 4,500 litres per day.

There is provision in the legislation for municipalities to enter into an agreement with the upper tier to deliver the program, or for several municipalities to jointly administer the program. The proposed amendments would enable local municipalities to name the designated authority for administering this program. The Ontario branch interprets this as a clear opportunity for public health units to be open for consideration.

We understand that the reasoning behind dividing the responsibility for approval and inspection of larger and smaller systems was to allow "one-stop shopping" for consumers seeking a building permit. However, more than 50% of certificates of approval are issued for replacement systems, which do not require a building permit. Septic systems have a natural lifetime of 15 to 20 years, so those installed in the 1970s and early 1980s are currently requiring replacement.

It is in the interest of lower-tier municipalities to encourage development, as that is where the greater part of their revenues are generated. In the past, concern for health and environment has been the limiting factor for development. Public health agencies and conservation authorities, who have been delivering the program in all but a few areas of the province for several decades, have frequently found themselves at odds with the local municipality over development proposals. If lower-tier municipalities take the responsibility for program delivery, it will appear that this system of checks and balances will all but disappear.

Given the cost-recovery nature of the program, unless all lower-tier and upper-tier municipalities within a designated area agree on one program delivery agency, the cost of providing the service may be prohibitive, without raising the price of a certificate of approval application substantially.

Whoever takes on this program also assumes responsibility for all current and future systems. The costs of liability, along with complaint investigations, is easily underestimated. A complaint investigation may take hours

and days, and may conclude with charges being laid. This is not done on a cost-recovery basis, and the agency responsible for program delivery will need to build these expenses into the charge for a certificate of approval.

Concurrent with the proposed changes in the present legislation is the suggestion that the bill and regulations be transferred to the Ontario building code. Our organization has strong objections to this course of action. The disposal of human sewage has no relation to the structure of a building and has serious public health and environmental implications. The primary mandate is the protection of groundwater and surface water, which is the drinking water source for a large percentage of Ontarians. Groundwater protection cannot be addressed as a local issue only. The entire watershed must be taken into account.

If the act and regulations fall under the building code, the perception will be that building inspection departments would have the ability and training to deliver the program adequately, which is not necessarily the case. Delivery agents must be trained in soil morphology, groundwater movement and epidemiology at a minimum.

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In conclusion, leaving the responsibility for program delivery for low-volume systems with the lower-tier municipalities will lead to a patchwork of inconsistent enforcement and inefficient and costly administration, especially in areas with low population. Assigning the responsibility for inspection and approval of all onsite sewage systems to upper-tier municipalities will remove any confusion about which level of government is responsible for a particular system and will ensure cost-effective coverage for all areas of the province.

Program delivery is optimized by retaining it at the provincial level. If it is the government's decision that the program must be divested to the municipal level, we urge that the entire program be allocated to upper-tier municipalities. The municipal department or agency providing the service will be able to support a larger staff, lower program administration costs and ensure experienced personnel will be available.

That's the conclusion of our presentation at this time. We thank the committee for allowing us this opportunity to voice our perspective.

Mr Hoy: Thank you very much for your presentation this morning. You actually answered most of my questions in the second-last paragraph before you were thanking us for hearing you today.

The riding I represent is very rural. There isn't a town or village over 4,500 people, and that's round numbers. They had in some areas the notion that they should have more building sites, more homes built to offset down-loading so they can have revenues, and here we have in the county of Kent municipal restructuring going on where there is no decision as of yet as to whether there will be a one-tier municipality or a two-tier municipality.

I was going to ask you the question if there would be a hodgepodge, and you say a "patchwork" of inconsistency. You've answered those questions and given some recommendations here that I appreciate very much.

Mr Laughren: Just very briefly, when it comes to inspecting septic systems — I live rurally and have my

own water supply and my own septic system, and they're trying hard to figure out how to put a user charge on me but they haven't figured it out yet — do inspections always occur only at the time of building of the septic system? Are there any follow-up inspections after 15 years, 20 years, 30 years?

Ms Judith de Grosbois: There may be a follow-up inspection if there's been a complaint made.

Mr Laughren: Only then, though.

Ms de Grosbois: That's the only time, yes.

Mr Laughren: Okay. Thank you.

Mr Galt: Just a couple of comments at the top of page 2, and thanks very much for your words of support and also for your very thoughtful presentation. As you get down a little further in that paragraph you talk about not recognizing some of the training programs. I bring to your attention that there are many organizations which require entry exams following graduation from any particular institution, so that could be consistent in a spot such as there.

The October 1 deadline, yes, we're concerned about that as well and are certainly looking at that date. I don't think there's any question you're going to see that date adjusted. Just to what point I'm not sure at this time, but certainly that date is pushing things pretty hard.

On page 3 a comment as it relates to replacement septic systems: A certificate of approval is still going to be required for a replacement system. And lower-tier versus upper-tier, who should provide which service: I'd appreciate any further information and thoughts you have on that one. That one is a struggle. I struggle with it.

I can see your concern about patchwork pieces with the lower municipality. Certainly I see a lot of — if it stays with the lower municipalities, they will probably be using health units to provide the service. I think that's a very natural evolution. The struggle with that versus a one-window approach to a building permit whereby the building inspector can be certified and trained to be able to do the job of septic systems, particularly in sparsely populated rural municipalities, is that an awful lot of complaints that we receive as government are: "We don't want the 13 or 14 inspectors coming out. Couldn't you have two or three or four? Do you need the 15?" I might be exaggerating, but I hear all kinds of horror stories out there. That was one of the things we were looking at to get to the one-window balance.

One window versus should it be upper-tier, lower-tier, large subterranean sewage systems versus small — yes, any more information, any more thoughts you have on that I'd appreciate receiving.

Ms de Grosbois: By written submission?

Mr Galt: Yes.

The Chair: Our time has expired. Thank you very much for coming this morning. We appreciate your advice and your expertise.

CITIZENS ENVIRONMENT ALLIANCE OF SOUTHWESTERN ONTARIO

The Chair: Our next presenter is Mr Rick Coronado, who represents the Citizens Environment Alliance of Southwestern Ontario. Welcome, Mr Coronado. We're pleased to see you here this morning.

Mr Rick Coronado: Good day. My name is Rick Coronado. I'm the coordinator for the Citizens Environment Alliance of Southwestern Ontario. We are based out of Windsor and we are a Great Lakes alliance of community, labour and environmental activists working for an educated population on protecting and enhancing our natural and community environments in the southwest region of the province. I am here today to comment on Bill 107 and to express our concern about the transfer/dumping of Ontario's water and sewage systems on municipalities of this province.

I guess from an environmental standpoint we asked for public hearings and we got them, although most environmental non-government organizations such as ours have little time and resources in such a short time frame to put together an effective presentation. We suggest that environmental non-government organizations have better things to do than to continually participate in hearings to fight the neo-conservative agenda promoting the propaganda that we can effectively gut the public services of this province in the name of efficiency and cost and wind up in a positive frame of mind.

Polls from April 1996 indicate that 76% of Ontarians want water services to remain in public hands, and for a government that prides itself in majority polls in order to mandate its governance, we think you'd better listen.

This government has been very crafty. Bill 26 — and I think this is the key issue; we call it the ominous bill, not the omnibus bill — changed the Public Utilities Act so that municipalities no longer have to hold a public referendum on the sale of public utilities.

Currently the Ontario Clean Water Agency, an agency of the Ontario government, owns and operates 77 water and 153 waste water treatment plants, and this is about one quarter of Ontario's water and sewage works. Municipalities and public utilities own the rest, although the Ontario Clean Water Agency operates 116 of these.

The agenda of this government is to download costs of public service expenditures to municipal government. An example: The Ministry of Environment and Energy has endured budget cuts of \$285 million over the next two years. Much of these cuts will be felt at the local level, with less monitoring, regulation and enforcement. As you may know, in Windsor the local Ministry of Environment and Energy office has been reduced to half its size. Where is the slack going to be taken up there?

The mayors and town councils are saying they must work for the best interests of taxpayers. Many are prepared to give private operators consideration, as they have in the case of garbage collection. Companies such as BFI and Laidlaw have certainly benefited. The result has been that the Ontario blue box system is in financial difficulty. A Report on Business article points out Laidlaw's bid for the ambulance service in the Hamilton-Mississauga area and the fear of the union, the Ontario Public Service Employees Union, for higher charges for profit service.

The privatization of our public water services means private companies will be accountable to their shareholders first, and the bottom line is profits. The first priority will not be water efficiency and conservation.

We are convinced, as in the case of the privatization of garbage services, that if municipalities are lured into the sale of public water services to the private sector, we will experience the cost of water rising and becoming unaffordable for the poor. Water systems could also deteriorate, as they have in Britain.

Let me talk about the England and Wales experience. Under Margaret Thatcher, one of the Harris government's mentors, no doubt, water and sewage services were privatized in 1989. They have since then experienced severe water shortages and soaring water rates, up 450% in several areas. Health has suffered since 1989. There has been a 600% rise in dysentery, a 200% rise in hepatitis A and there have been increases in other gastrointestinal diseases.

There has been a rise in the cryptosporidium parasite in England and Wales. In Milwaukee in 1993, 400,000 people became ill and 100 people actually died from drinking water contaminated with the cryptosporidium parasite. It is one of the largest water-borne epidemics in North America.

1040

In England and Wales, profits from these private water companies funnelled into huge executive salaries, as has been the case with the Ontario privatization of garbage services. Water disconnections peaked in 1991 and 1992 at over 21,000 households. In 1995-96 there were 5,800 household disconnections. The British Medical Association issued a press release in August 1996 calling for a ban on water disconnections due to serious public health consequences. The water system itself has become poorly maintained. This will be the case in Ontario with the move to deregulate while cutting local environmental monitoring. We are concerned that the privatization in Ontario will lead to similar tragedies as in Britain. We've also included in our package several news articles from England and papers in the UK.

York region in Ontario may be the start of privatization in Ontario. A consortium is putting together a bid. The consortium includes Consumers Gas and North West Water, a British company whose top official has an annual salary of \$720,000. British, French and American companies are opening offices in Toronto with an eye on Ontario's water. They will make big money operating plants in the long term. Their biggest profits will come when they can start piping our fresh water to US markets. We can remember the debate over free trade. As a commodity water is under the rules of NAFTA. Ontario's water, once diverted, would have to be perpetually supplied even during times of shortage in Canada.

Are there alternatives? A coalition of health, environmental and labour called Save Ontario Water is opposing the potential loss of public control over Ontario's water resources. We are urging municipalities to keep their water and sewage treatment plants public. We advocate that the province pass laws implementing mandatory water conservation for all sectors of users: industrial, commercial, municipal and agricultural. The objective should be to bring Ontario's per capita consumption of water down to the volumes used by European countries. Savings from conservation programmes should be

measured before privatization is even considered. We will be asking municipal councillors to defend public control of water. A fight-back has begun.

We are asking for full environmental assessments for this precedent-setting, pre-emptory attack on our public water system, not class EAs. A full EA would allow the issue of need alternatives to be evaluated.

Minister Norm Sterling suggested, in announcing the introduction of Bill 107 to the Legislature called Water and Sewage Services Improvement Act, "that restructuring the services will improve the way they are delivered so that the taxpayer receives value." He says that restructuring will provide the best possible service with optimum efficiency and least cost. But the British experience suggests caution. It would also suggest that this government is ideologically driven, ignoring the warnings and wanting to follow and ram through its Thatcher, neo-conservative agenda that has proven so disastrous for the UK.

We would suggest that if this government is allowed to ram through its ideological agenda in Ontario, we, the public, will pay for a long time to come with our health and loss of public control of our vital services. With hospital and health care cuts we can't afford any outbreaks of water-borne epidemics.

A report prepared for the Ontario Municipal Water Association discusses why public utilities, not privatization, is the answer. They claim customers of public utilities have, in political terms, a voice. That voice is exercised in regular elections under the Municipal Act and through open meetings of the public utility commissions.

They say that franchised utilities have undesirable consequences for both the customer and the municipality. Not only are the customers captives of the company because they have no exit to other suppliers, but also the municipality is on the hook for customer complaints. What a municipality may gain by divesting itself of responsibility for a utility is more than losses through increased political costs that stem from the loss of public accountability. Privatization has political costs because there is no voice for customers.

If this government is not stopped, we will continue to witness the dismantling of the best public service programs in the entire world.

In summarizing, I just want to go over some of the things we've already mentioned.

Private companies will be accountable first to their shareholders, and net profits are likely to be their first priority, not water efficiency and conservation.

Without controls, under privatization, water costs could rise and become unaffordable for the poor, while systems and service could deteriorate as they have in Britain.

Recent deregulation has weakened and delayed important water discharge laws. Without a strong regulatory framework to guide their activities, private companies are likely to increase pollution of our waterways, as they have in Britain.

Maintenance costing billions of dollars is needed now to repair these systems, which are leaking, aging and polluting, but these needs are likely to be ignored in the pursuit of profits.

Droughts, overdevelopment and climate change could lead to diminished supplies and water crisis and conflicts between water users in the province.

Unionized jobs and workers' health and safety, and consequently plant performance, could be placed at risk.

Water allocation will be dictated by development engineering and profits and not by the environmental considerations of the carrying capacity of our watersheds.

Groundwater resources aquifers could be depleted since watershed protection is not included in Ontario's Planning Act.

Ontario's waters will not be protected by private interests from diversion to areas in the US and Mexico which are or will shortly be suffering severe water shortages.

Trade agreements will make waters diverted into a commodity which, once diverted, will have to be perpetually supplied.

Fragmentation of the management of and jurisdiction over our water and waste water systems has caused the problems which have bankrupted Ontario's water budget.

Adding many new private users to the mix without strong regulation in place will compound our water woes.

Mr Laughren: How do you really feel about this bill? I did appreciate the directness with which you presented your views.

On page 1, the second-last paragraph, you say, "Much of these cuts will be felt at the local level with less monitoring, regulation and enforcement." I wanted to ask you — it's a bit of a long question; I hope you won't mind it — if you were aware of what happened in Sudbury, where Inco had a gas leak and dozens of people actually keeled over on the street and had to be taken to hospital. It was in late 1995.

The Ministry of Environment laid charges against Inco, and then when it came time for the appearance in court, on two different occasions the Ministry of Environment people failed to show up and the judge threw it out. There's real outrage at what's happened with the cutbacks in the Ministry of Environment and their failure to follow up on what was obviously a serious public health issue.

I'm wondering whether you're basing your comments in this presentation on that incident or other incidents or whether you're just concerned because of the cutbacks.

Mr Coronado: It's overall concern. Coming from Windsor, we know the value of enforcement. Our organization came together in 1985 over the incident of the blob in the St Clair River. We have fought very hard and for many years to protect our water systems there. They were closed two or three times during that crisis. So the concern over the health of drinking water is a very big focus for us in the Windsor area.

As far as privatization is concerned, right now, tonight at city council, there's a debate over the privatization of the parking system. There is obviously a move afoot now to move the entire Ontario programs into the municipal sector. Perhaps the municipal sector can be effective in some areas, but I would suggest to the Ontario government that if they're going to continue to downsize, devolve and deregulate, then they ought to pass the resources on to the municipalities as well, because we're not going to be able to do it the way we are.

As I said earlier, with the downsizing now of the Windsor Ministry of Environment and Energy office, as far as our interface with the US side and the very hot binational issues in that area are concerned, we're not going to be as effective as we were.

1050

Mr Bart Maves (Niagara Falls): Thank you very much for your presentation. I have a quick question. Some 75% of systems are owned already by municipalities and have been for quite some time. They could have been privatized already. Many times municipalities have faced difficult situations, yet have never taken that step. What makes you think that all of a sudden they'll all rush to take that step?

Mr Coronado: Bill 26. You guys rammed that through and now it's just going to be a red flag. The companies are coming out of nowhere. They're making offers to municipal governments. We've got three or four of them down in our area right now. They're all looking at it, saying, "We have to worry about the taxpayer." Obviously they want to sit down when they're being offered by a private company, "We can do this job \$400,000 to \$500,000 cheaper than you're doing it right now." They're going to want to look at it. That's what we're concerned about.

Mr Maves: You think what they'll contract out is the administration of the service.

Mr Coronado: Why not?

Mr Maves: The bill puts the onus of environmental protection now on the municipality if they contract it out, so why would all the maintenance of the system falter? Even if they contract out the administration of it, the municipality is still in charge of the Environmental Protection Act as it pertains to the water and sewer services.

Mr Coronado: Yes, but municipalities don't have the resources to enforce. The Ontario Clean Water Agency was put together by this province. What was it put together for?

Mr Maves: Public health officials, who are 100% at the municipal level, have been looking after inspecting this stuff for quite a long time, so they have the facilities to do that.

Mr Coronado: What we're saying is if you pass it on to municipalities, as has been the case in England and Wales, their experience has been very detrimental. What we're suggesting to you is if you do this, after passing Bill 26 and giving them the opportunity now to do this without public referendum, you're putting us in a very precarious position at the municipal level. We would suggest that if you want to downsize and pass the resources off to municipalities, you pass along the resources to go with it.

Mr Hoy: Thank you for your presentation this morning. I spoke with someone who visited England recently and they concur with some of the things you've said. They told me other points of interest, such as connecting fees to water lines going up to astronomical amounts. He was suggesting \$3,000 per home in one location, where prior to that it was only \$300. It's quite an increase for the citizens there.

I appreciate your comments throughout the whole of your brief. I just want to mention that I too have noticed the reduction in staff at MOEE in Windsor. The response time to investigations and the resolution of complaints is taking much longer. That reduction in staff is not helpful to the citizens who have complaints throughout many areas, not just the topic of today, which is water and sewage, but other things as well. I've noted a marked difference in the response. It will perhaps jeopardize pollution control in the future.

Mr Coronado: Absolutely.

The Chair: Our time has expired. We appreciate your appearance here this morning and your advice.

SUSAN SMITH

The Chair: The next presenter is Susan Smith. Thank you for coming this morning.

Ms Susan Smith: Thank you very much. I'm hopelessly nervous, so I hope you'll be able to hear me. Actually, I won't be doing my job if I don't sound like I'm absolutely, ideologically driven in terms of not only what I opposed about what was in Bill 26, but here in this bill, the enactment of the unfolding master plan.

I don't actually look at this out of the context of both the Development Charges Act and, I believe it's Bill 102, about municipal financing, the piece of legislation about that. Keep in mind that I feel I'm asking the resources development committee to have your analysis, particularly at the regulation stage, and appreciate that when people are watching what you do, the chronology of how you pass these bills and how you implement them is incredibly significant, no matter how quickly the government may choose to call an election after this particular set of bills has been passed.

I oppose it ideologically because it's a set piece. It all works together.

I believe we should stop public-private partnership for natural resource entities that are absolutely essential to communities, public health and how people thrive in our communities. I don't want to repeat what people have said in terms of the cautionary tales about what's happened in Britain.

I appreciate that there is no express prohibition to transfer to the private sector in this bill. I think that's a big mistake. That's something I would look for. Lots of people who read the Canadian Constitution as it unfolded noticed the express absence of a prohibition that a corporation can't be viewed as a citizen, and we certainly know that one of the first pieces of constitutional law to be challenged and ultimately decided did have to do with corporations having the rights and privileges of citizens and communities and groups of people.

That was a terrible mistake. That's certainly why capital is fleeing into Canada, and probably most particularly into Ontario, because we have assets that have been built up with social capital, community capital, generational capital over decades, and you people want to do a lot more than sell the farm. I am requesting this committee to recommend that express prohibition of transfer to the private sector be enumerated in the bill.

Also, there are provincial grants mentioned, I believe going back to 1978, but again as a set piece with the municipal restructuring that is taking place. Even though that might appear to be an accounting impediment to municipalities that would choose to do this, I actually think that with all the municipal restructuring, it will make it quite a bit more difficult to get actual numbers pinned to the wall, instead of Jell-O.

That of course raises the issue of social capital that citizens have in their reserve funds. I would hate to see that cannibalized and taken over in a hostile way from municipalities. There certainly are multinational water companies. I'll talk about the one in my community in a minute. There are really powerful corporate interests to be represented here, transnational corporations that may never care if water comes out of an aquifer again. I'm here to tell you that doesn't represent my cultural belief or value, and for generations of Canadians who have attempted to protect their karst topography, their groundwater supply, when you think about the generations of people who farmed and did all kinds of things throughout Ontario for decades, I don't think this is the right route to go.

Two cautionary tales: You've cut \$295 million. There are no more capital grants envisioned. You've certainly cut back MOEE positions, trained, skilled people who have provided service to the community. Public health is an issue because as the municipality takes over 100% of those dollars, this becomes really significant.

I'm going to refer to the cautionary tales very briefly. One is Naramata. That's not in Ontario. That's in British Columbia. We have a municipal council I can speak about here in London that will be very keen to appoint boards and not have council-elected representatives on the boards. The cautionary tale about what is unfolding in Naramata in the context of — you work in the context of what was federal Liberal and Conservative agenda for a long time in terms of corporate hierarchy, and that is how municipalities and provinces in your are constrained legislation today.

Some 76% of Ontarians who were polled suggested they want public control of water. They don't want it sold off, not only the economic issues of the costs increasing, but there are a lot of longer-term costs that inform this.

1100

The other cautionary tale is about London Hydro. Trigen is owned by Trans-National Corp out of Lyon, France, and of course they have an interest.

If you had the opportunity to have professor Bill Fyfe, who's a professor emeritus at the University of Western Ontario, he could tell you about the geomorphological history here in London, about how London used to be a 2,000-foot-deep lake. When two glaciers melted, it drained interbasin out into Lakes Erie, St Clair and Huron. The underground water flow in this city is tremendous but there is therefore also the potential for great error in terms of contamination.

Actually, in 1962 a good percentage of the people in this municipality got their drinking water from wells. Of course, that's no longer the case. However, the potential

of the liability for failing septic — even though the municipality has in the past had the process for gradually funding the separation of storm and sanitary sewers dealing with the environmental hazards of the outlet overflows. You seem to be throwing every roadblock in the way, and as a set piece, environmental remediation in London appears about to be seriously constrained. This may not be the appropriate time to do that.

With privatization and the spectre of corporate remuneration, we might end up seeing listings, public first, then privatized, of engineering staff or account executives who will now be well in excess of \$100,000 remuneration. I'll simply remind the government that you've frozen the minimum wage for the last two and a half years, so I think that's quite inappropriate.

With respect to Trigen and the cautionary tale, what I've given to the clerk is some background material about the absolute contortionism of the local municipal council, its appointed hydro commission and the interest of, of course, every Trans-National Corp going into the privatization of that utility.

They are paying people generous executive salaries for the privilege of introducing lots of technology for customer accounts. Actually, there was so much cash flow and so little scrutiny and so little real public trust expressed that now they're trying to recover millions, hundreds of thousands of dollars, simply because of their bad past practices in accounting.

I'm sure you've enjoyed this morning's London Free Press, so I'll just remind you that a minimum of three articles today address the impact of this bill.

Development charges: When you're constraining them, that's limiting the potential of the municipality to get funding for subwatershed studies up front. There are members of a municipal council here in London, given what I've told you about the tremendous underground configuration of water flow, who have gone out of their way to find interests to disclose at the level when the municipality is voting about subwatersheds and about putting forward the engineering dollars to do the studies. In that instance, where does it come in for the municipality to ultimately be able to make a good decision about monitoring septic systems, about the water supply system?

I guess people have a pretty emotional response to water. When I was 19, I travelled in West Africa, and one of the most interesting experiences I had, in addition to appreciating that the mortality age for most people in the country I was in was 36 years of age, which was younger than both my parents — potable drinking water is an absolute necessity of life. There are aesthetes in this world who fast for days; I'm certainly not one of them. But drinking water is an absolute essential.

You're not putting in, as a corollary to this, safe drinking water standards; you're not acting on that or working on the tritium levels, working on all the standards out there. There's no dearth of input this government and governments before have received about implementing something as elemental as a safe drinking water standard to be guaranteed. As a set piece, this is so myopic, so shortsighted. To the government members, I will say that

you were aware of this politically because of the chronology, if nothing else. That's about all I want to say.

Mr O'Toole: Thank you very much for your presentation, Susan. On Bill 98, the development charges, I would like you to be informed that all hard services are covered under the current proposals in Bill 98. So I would qualify that in that there's no impact on providing hard services.

Ms Smith: There's an impact right now. Bill 20 froze development charges. Any municipality that had been in the process of rejigging their municipality to reflect the real cost of growth and the real hard services costs requires Al Leach's signature to enable them to raise the development charges. Your messaging to business might have been really important, but it was dumb.

Mr O'Toole: The new formula in Bill 98 — Bill 20, the planning bill, did freeze them because there was so much variation in the province, from as low as \$500 to as high as \$25,000. That was the intent under Bill 98, if you've taken part in any of that. Bill 106, the fair assessment system, is also in hearings. It's intended to make sure that every person across Ontario pays their fair share. Would you agree that that is what we should do, or do you think some people should not be paying their fair share?

Ms Smith: Well —

Mr O'Toole: That's really what this is about. Specific to this bill —

Ms Smith: Sure. Fair share is interesting to me. When I read Bill 32 and Bill 42, the alacrity with which Bill 42 was passed left me reeling. To appreciate, again I will say that minimum wage — there are people in my community who make minimum wage.

Mr O'Toole: That's Bill 49.

Ms Smith: Yes, that's Bill 49. So what was passed before that, and with tremendous speed, was Bill 32 first, which was in place for all of three days, freezing the remuneration of MPPs. But what Bill 42 did was raise the pay once the social contract came off, raise the remuneration you received dramatically.

Mr O'Toole: Minimum wage should be — I remember one of your comments earlier.

Ms Smith: Go back to the record.

Mr O'Toole: Yes, that \$22 should be the minimum wage. That's your own record.

Ms Smith: No, that wasn't the figure, but it was quite high.

Mr O'Toole: It was \$19.50.

Interjection: It was \$19.85.

Mr O'Toole: On this bill, I think you should understand that 75% of municipalities own their water and sewer today. It's just completing that cycle. I have a list here; almost all the municipalities have requested this. It's certainly working in cooperation. The province will still maintain a very important role of setting and enforcing standards for drinking water and sewage discharge. That is the responsibility —

The Chair: I'm going to have to interrupt. Our time has expired. Apologies to the Liberal and the NDP caucus; we'll go to your caucuses on the next questioning.

Thank you very much for taking the time to come before us this morning, Susan.

ONTARIO WATER WORKS ASSOCIATION

The Chair: We move now to Mr Tom Eyre, who is a representative from the Ontario Water Works Association. Welcome, Mr Eyre. We're glad to have you join us this morning.

Mr Tom Eyre: We thank you for the opportunity to address the committee. I am Tom Eyre, and as chair I am representing the Ontario Water Works Association, an essentially volunteer organization of water industry professionals, manufacturers and utility suppliers. We have over 1,000 members in Ontario, and are a section of the American Water Works Association, with over 55,000 members worldwide. We set standards for the industry and provide funds for major research work in North America. We're here today to address Bill 107.

We recognize that in large measure the changes specified are a continuation of the separation of the original operating arm of the old Ministry of the Environment from its regulating arm. The formation of the Ontario Clean Water Agency was the first stage. We realize that as the provincial government divests itself of municipal assets, this is by way of transfer to the local municipality.

We also recognize that the option must remain with the municipality to operate the plant competitively. However, our association has also recognized that the ratepayer deserves the best quality at the lowest possible price.

There is a current restraint on pricing of water in the public sector, and that is by having an elected board, council or commission. In this way, the customer can ensure accountability without there being a need for regulation. However, if privatization does occur, there must be some form of control. In this context, the United States has both public and private water utilities. In most states, a state public utility commission reviews prices etc. In Ontario, the electrical utilities are regulated, even when publicly owned.

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Perhaps our major concern with the act is the way in which the door is opened slightly for privatization, without setting any rules. Generally speaking, the customers of a public utility believe they own the assets, not the council of the municipality.

There is no question that for the disposal of such assets, the customer should be involved, as councillors are only trustees. A mandate, whether by election or referendum, should be established to determine the disposal of waterworks or waste water assets. The data supplied by Insight Canada Research for the Freeman report, *Models for the 21st Century*, indicated that more than three quarters of Ontarians believe that water should be provided at cost and be municipally owned, not privately owned.

In conclusion, the OWWA commends the government for passing down the ownership of plants, but would be concerned if subsequent sale of plants took place without adequate safeguards.

We appreciate this opportunity to make this presentation. Thank you.

Mr Agostino: Just a couple of points. You suggested that the door has been slightly opened. I believe the door has been jarred wide open and the windows and the roof

and every other part of the house have been opened up to allow privatization to occur as a result of this bill.

Mr Maves made a comment. I think we've got to separate clearly the difference between privatizing the operation if certain provisions are in place. That has occurred, and in some cases it has occurred successfully, if you have successor rights, if you have the contracts, if you ensure that the protection is there. Under certain circumstances, that could work.

But there's a significant difference between the operation being run by a private company and the assets. The municipality is not going to make a lot of money by having the operation of a plant. They may save \$500,000 or \$1 million a year in larger municipalities by having a private company operating. The money that is to be made, from the point of view of offsetting the down-loading, is from the sale of the assets and the utilities that come with that, and then of course the ability to set the rates. This is what I want to talk to you about.

Clearly, this legislation, tied in with Bill 26, allows any municipality across Ontario to sell the whole thing, the assets, the whole operation of water and sewer, and with that you give up the right to set the rates. Do you believe the rates for water and sewer services should be set by a private corporation, or do you believe that local councils and elected officials should have the responsibility to set the water and sewer rates?

Mr Eyre: Currently, we have for many years established a water rate across the province municipality by municipality. This doesn't seem to have caused a problem. Canada, in general, has the second-lowest water rates in the world.

However, where we see the concerns is that if it does move this way — and I do not wish to get into the debate as to whether the door is open wide or just slightly ajar — if that does occur, we're recommending that there be some overall regulating body to at least look at it. Concerns, obviously, in our case have always been to look after the customer first. In answer to your other statement, obviously the best proponent or operator of a unit, whether it be public or private, is still in the best interests of the customer if those regulations are in place.

I refer to the States more so than any other jurisdiction, where you do within a province or a state have private and public companies working side by side, and there is an overall control there.

Mr Agostino: Just to follow up, a quick question: Do you believe municipalities should have the right, if they choose, to privatize and sell their water and sewer services and assets?

Mr Eyre: I believe if they're given approval by the customers, ratepayers or whatever, then that could well take place if indeed that is what is given to them as a mandate.

Mr Agostino: You're aware of the fact that that was there previously, and after Bill 26 the referendum in regard to the sale of the assets has been taken away, and municipalities do not have to go through a public referendum in order to sell their water and sewer services or assets.

Mr Eyre: My only knowledge of Bill 26 was in fact the need to remove public utilities commissions by not

going to a referendum. I wasn't aware that it went that one step further.

Mr Agostino: Yes, it did.

Mr Laughren: Thank you, Mr Eyre, for coming before the committee. I appreciated what Mr Agostino said about the difference between ownership of assets versus simply contracting out management. I think that's a good point.

On the question of privatization, basically your organization largely are private sector folks, are they not?

Mr Eyre: No.

Mr Laughren: They're not? I thought they were.

Mr Eyre: No. In fact, our sector covers private companies, public utilities, municipalities. Even OCWA is a member of our association.

Mr Laughren: It's a mix.

Mr Eyre: We are mixed, yes, correct.

Mr Laughren: Since privatization now is going to be the order of the day, with encouragement by the provincial government to the municipalities — it's not ordering them to, but if you squeeze them enough, then they'll look for opportunities to make money, in my view — I'm wondering about what rules should be applied to privatization in order to, as you put it, protect the real owners of those systems. I'm worried about that because right now we don't have a framework for privatization in the province, whether it's water, Hydro or LCBO. There's absolutely no framework out there, and it's a mug's game at this point. So that's one question I had, and perhaps I'll have time for a second one on rates, but I really wanted to know if you could give us some advice on the whole issue of what rules should apply when and who should apply them when it comes to privatization.

Mr Eyre: If I could use the UK example, there are regulators appointed by the government there to control, within certain limits, the pricing structure. It's as good as the regulator handles it. For example, in the province, if we take the electrical industry, the supply industry, Ontario Hydro has been the regulator of the municipal utilities there and has set rules there. Although the Ontario Energy Board is partially a control, it is not a regulator of Ontario Hydro on its own. So that aspect of it has not been regulated.

Where a regulator would be is to make sure — again, I can't state what the limits would be, but it would at least apply some overseeing situation. You have it with the CRTC. Anywhere there's a monopoly situation, there should really be somebody who has the final say to ensure, whether it's a public or private monopoly, that there is some control.

Mr Laughren: We do have a privatization minister who has hired somebody at a quarter of a million dollars a year to help draft this framework. That's what he's doing.

My other question, if there's time —

The Chair: Yes, there is time.

Mr Laughren: Thank you — has to do with rates. Who should set the rates, particularly if it's privatized? If it's not privatized, then you've got lots of pressure on the elected municipal folks on rates. If it's privatized to whoever, who should ride herd on their right to set rates?

Mr Eyre: Currently, it has been left with the utility or the municipality or whomever to set those rates. There is some competition, obviously, between municipalities for supplying things, but it really is a monopoly situation. Supply is usually restricted within the municipality, so it isn't the question that you're buying from the equivalent of Ontario Hydro, as, for example, electricity is. Therefore, the local costs very much dictate the rates in the first place.

The question of money being made as profit of course is the other side of this, which has to be addressed and would have to be looked at if it went that far. I haven't, nor has my association, really looked that far down. What we're really saying is, we appreciate that the municipalities are taking over their plants; that, we understand. But we're really saying perhaps there should be some caution as to how any further steps go, and if there is going to be a bill specifically on that, then we probably will come back and address that at that time.

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Mr Jerry J. Ouellette (Oshawa): I have just a quick question. We had a presentation from the health inspectors — and I realize they may be different fields, but you may have an opinion on it — regarding the 78 hours of training for the course that's available now to graduate school for inspections. Do you have any concerns in any of those areas?

Mr Eyre: In the inspections, I'm more interested in the training and certification aspect for waterworks operators.

Mr Ouellette: Do you see any problem with the current system the way it is now?

Mr Eyre: I personally — and again this is not an association view; I'm sort of getting into a personal thing, because our association does not have a view on that.

Mr Ouellette: That's fine.

Mr Eyre: I think training is important and updating is very important. For example, I think we should be improving the standards we set. I wasn't aware exactly of the 72 hours, nor do I really know the health inspection side.

Mr Ouellette: It's 78 hours.

Mr Eyre: The usual control of course is the fact that there's a medical officer of health to whom those people respond and his training is significantly greater than most medical practitioners. So one must assume that his control of those people is significant.

Mr Galt: Thank you for your presentation. I'm kind of curious about your comment about the door being opened slightly for privatization, and yes, there's nothing there that absolutely blocks it through asking for all grants to be returned and the minister approves how they're returned; there's a lot of control there, but over and above that, down the road, yes, there's that possibility. I'm curious as to how you see that might be plugged, your recommendation, making a comment to it.

The other thing I'd like to bring to your attention is the concern we have as we look at OCWA that it could go the other way in all this Who Does What and getting it streamlined. It could come to a monstrous monopoly, and the previous government developed it, which is one step towards privatization, by the way. We want to see it

stopped by taking it to the municipalities. We see OCWA as the operator, the owner, the funder and the regulator. We believe there must be a conflict of interest in there someplace. I'm coming back to my question, after a few comments: How do you see overcoming this problem of a possible door being opened slightly, as you put it?

Mr Laughren: How was that privatization?

The Chair: Mr Laughren, please, order.

Mr Laughren: I don't understand what you're talking about; talking silly.

Mr Eyre: OCWA, as I stated in the brief, was the first step for the ministry.

Mr Laughren: The province owns it.

Mr Eyre: I'm starting to feel like I'm in Parliament.

Interjection: It's a challenging place to speak, I can tell you.

Mr Eyre: It would have to be a long workweek, so I don't think I want to be.

OCWA was the first step. When the ministry originally ran its plans and set standards for quality, the splitting away of OCWA was the first step, as we saw it. It's really very difficult and I've perhaps been asked a lot of questions which — one can see through a crack or a door, whether it's ajar or wide, but really until you get there, you have a lot of problems really understanding whether it's a picture over there or real things. I have a problem moving that a stage further and talking about privatization.

What I'm suggesting is that if privatization does occur, by whatever means, there should be some relatively strong regulation available so that the customer, and that's who we serve, has the chance to have some recourse.

The Chair: Thank you very much, Mr Eyre. We appreciate your taking the time to come before the committee this morning to give us your best advice.

WALLACE MacKINNON

The Chair: We would now like to hear from Mr Wallace MacKinnon, please.

Interjections.

The Chair: They're getting it out of their system before you begin. Welcome, Mr MacKinnon. We are pleased to have you join us this morning.

Mr Wallace MacKinnon: Thank you, Madam Chair. I appreciate having the opportunity to come here this morning and speak to you and the committee. Just for your own reference, I can speak from a varied experience on this issue, because I have worked for municipal, provincial, regional and federal governments as well as the private sector in the water business, so I can see it from all sides.

The purpose of my submission is twofold: to speak in support of the legislation and to offer the following suggestions to further improve it and make it even more attractive and effective for the province of Ontario and the municipalities.

I want to speak first about the repayment of grants. The proposed legislation requires that any municipality that undertook to sell all or part of its water or sewage works to the private sector would have to repay the face

value, without interest, of any provincial capital grants it has received since 1978.

I suggest that requiring municipalities to fully repay any grants they have received for their water or waste water infrastructure serves as a major disincentive towards seriously considering privatization of these facilities as a viable alternative, especially when there is no time limit placed on the obligation to repay. Infrastructure built with a grant given 15 to 20 years ago should not be placed in the same category as infrastructure built with a grant made five years ago.

A reasonable compromise would be to establish a formula that enabled the province and the municipality in question to write off the value of the grant over a reasonable period of time. The length of the write-off period could be linked to the circumstances of the original grant; for example, how long ago the grant was made, the value of the grant in relation to the total value of the infrastructure, the number and value of other grants received by the municipality etc. This approach would leave municipalities free to choose what they feel is best for them and, at the same time, return some of the funding to the province if the accumulated equity in the infrastructure was converted into capital.

I'd like to speak about a smooth transition from provincial operations and ownership to municipal operations and ownership. The proposed legislation contains provisions to ensure a smooth transition period. OCWA will continue to provide services to municipalities in accordance with existing agreements. In cases where agreements do not provide for a full-service termination date, municipalities can choose to retain an alternative service provider after a reasonable notice period is given.

OCWA and its predecessors were given a mandate to provide operations and maintenance services to municipalities which either lacked the resources or had no interest in running these facilities themselves. At the same time that most of this infrastructure was built, there essentially was no private sector presence in Ontario that possessed the ability to fill the gap that OCWA and its predecessors were called upon to fill.

This is not the case in 1997. Today, there is more than sufficient interest, capability and capital in the private sector to respond to all municipal needs for water and waste water services. Therefore, there is no real need for OCWA to continue on indefinitely as an operating entity.

Bearing this in mind, I suggest the legislation include a clause which sets a reasonable time limit as to how long OCWA can continue providing service to a municipality or group of municipalities. At the end of that period, OCWA would no longer have a mandate or an obligation to provide service to the municipality in question. The municipality would have the choice of taking over operations with its own workforce, absorbing the existing OCWA workforce into the municipal organization or contracting out the services to a private sector company.

It is very difficult, if not impossible, for the private sector to compete against a subsidized government entity such as OCWA. This government has taken the position that it has no interest in being in the service delivery business in areas where the private sector has the capability

to meet the demand. Supporting or prolonging OCWA's existence any longer than absolutely necessary will only serve to stifle the private sector's interest in the Ontario market and discourage vigorous and healthy competition.

Bearing this in mind, the government should place OCWA in a no-contract-renewal, no-new-project-operations mode and instruct OCWA's management to focus on facilitating smooth transitions for all of the infrastructure the agency is involved with. Municipalities and the private sector will quickly and effectively fill the void created by OCWA's departure.

I'd like to speak next about the capital improvements, upgrades to existing infrastructure and the same to new infrastructure projects. The proposed legislation amends the Capital Investment Plan Act, 1993, thereby relieving OCWA and the crown of the obligation to construct, expand or finance the construction or expansion of water or sewage works.

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It must be noted that the legislation does not prevent OCWA from entering into new agreements to finance, construct and operate infrastructure expansions, nor does it prevent OCWA from financing, constructing and operating new infrastructure. This in effect gives OCWA an unofficial mandate to maintain and expand its existence. Private sector companies are ready, willing and able to meet the infrastructure needs of municipalities that lack the resources or do not wish to undertake those projects on their own. The continued existence of OCWA will only serve to drive the private sector out of Ontario and, over the long term, entrench municipal dependence on the province for infrastructure support.

The environmental approvals process now in place will allow the Ministry of Environment and Energy to assist municipalities in ensuring that plans for new infrastructure, whether delivered by the municipality or a private sector company, are capable of meeting the service demands on an operational, financial and environmentally sustainable basis. The MOEE could also reassume the mandate to serve as a facilitator to support municipalities which do not have the resources to initiate and administer an infrastructure project on their own.

The need for revitalization and upgrading Ontario's water and waste water infrastructure is substantial. Returning control and responsibility for this infrastructure back to local government will motivate municipalities to move forward on this issue. Creating a fair and competitive business environment will motivate the private sector to dedicate the resources and funds required to help municipalities get the job done right. The end result will be a win-win-win situation for the environment, the government and the citizens of Ontario and our economy.

Mr Laughren: It's an interesting presentation, the idea of a shotgun to make sure that OCWA gets out of the business and gives it to the municipalities; they wouldn't have any choice. I worry about two things. I worry about the motivation of the private sector. I know they would be doing this for the good of the municipalities, not for themselves, but I'm wondering why it was such a debacle in Great Britain.

Secondly — and I know you make a proviso at the end that MOEE would get back into the business for municipalities that do not have the resources — I have several communities in my riding that have 500 people where the water table was a disaster and there was no choice; it had to be replaced. But that cost millions, and it's not even remotely possible for that to be financed by the local residents, not even remotely. I don't know who decides whether or not a municipality can afford it. That's the other thing, because I can't imagine many municipalities saying, "Oh, we can afford it; don't worry about us," and others saying, "Hey, not us; we can't do it." So those are the two things that intrigued me about your presentation.

Mr MacKinnon: Well, if I could speak first about the British experience, and I have very limited knowledge of it, but I could assure you that for every bad-news story you have heard about privatization in the UK, I've heard a good-news story, because I've talked to several of the companies across England that have been involved in this.

England's infrastructure was crumbling. There were many municipalities where, if you lived there, you didn't know from one time to the other when you turned on the tap whether anything was going to come out, and that was before privatization. Privatization injected huge investments into that infrastructure, investment the British government did not have. They felt this was their only choice.

The people who have typically come to Ontario to talk about Britain's experience have come here with a message to defeat change in Ontario, so they'll only speak about what they want you to hear. I would suggest that if you're going to base a decision on what you hear, then you'd better go and get both sides of the story.

As far as private sector companies doing things for the good of the municipality, there's no doubt in my mind that they're in this business for a profit, but private sector companies are also driven by success in delivering service to their customers. If you don't perform, you get tossed out on your ear. If you have a contract with a municipality to deliver a specific quantity, a specific quality and a specific level of reliability, if you don't, the penalties associated with that are huge. Try that with OCWA and you'll just get: "Sorry, we screwed up. We'll try it over again." What I'm saying is, you'll actually end up better off being served by either the municipality or by a private sector company.

If you investigate the performance results of OCWA measured up against municipal operations or private sector companies, you will find that municipalities and private sector companies consistently outperform OCWA in delivering value, environmental compliance and stabilized rates. The reason that happens is because they are closer to the point of control. If the city engineer here in London is running the waste water operations and he doesn't do a good job, he's going to get whacked by council. He's either going to turn it around or get pushed out the door and somebody else is going to take his place. If OCWA is sitting there, you're fighting a very large bureaucracy which the council in any municipality has a really tough time defeating.

It's even easier for a municipality to take a private company — and I draw this analogy: You try to take a municipal civil servant out on the steps of city hall and reprimand them for poor performance, and they would get lots of people coming to their defence. You take a contractor to the steps of city hall and reprimand them for poor performance, and the citizens will line up to do the same thing. It's just the nature, survival and performance.

Mrs Barbara Fisher (Bruce): I have enjoyed very much your presentation this morning. It's rather enlightening, given that you've had experience on almost every front in dealing with the situation. Without having stated in what order your professional interests were, at least you have the experience of all levels, and I think it's very enlightening.

I would just add a comment that although you said you knew nothing about the British system — hardly; you did know that it was in a deteriorated state when they did have to go to the privatization of it to provide that quality and quantity and service that people do want.

I take a bit of exception to something that was just stated here with regard to a shotgun approach to OCWA. It was put in place for a reason; it served its role for the time being. Just to cite you an example of something in my community, we have a situation where a single municipality a year ago — it's a community of about 2,000 people; just less than that, actually — was paying about \$135,000 to OCWA to service their system for the year. They decided to be a little more creative in their bidding in terms of servicing and, lo and behold, one year later it's \$90,000 for the same servicing.

So I think your point is well made when you talk about sharpening the pencil. There's nothing to say it has to go away, but it's going to be competitive and it's not going to be on the backs of taxpayers, taxpayers' dollars subsidizing against competition.

My one question to you is this: On your repayment of grants, your suggestion there of repaying at the face value without interest, did you consider in there any suggestion with regard to depreciation?

Mr MacKinnon: That was not mine. When I spoke about repaying without interest, that was what the proposed legislation had in it.

Mrs Fisher: My question to you, though, is, where would you bring depreciation into the discussion if it was being negotiated?

Mr MacKinnon: You should look at the value of an asset based on its book value. If a grant is going to be given for \$10 million, it should be written off over the life of the infrastructure it's supporting.

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Mr Hoy: Thank you for your presentation. You've given us and the government something to think about here in your presentation most clearly. There is a view that municipalities will not be able to maintain some of the water and sewage systems that are going to be downloaded on to them and over time some may choose to sell and privatize. In the middle of your first page you talk about a formula for the municipality to write off the value of the grant over a reasonable period of time.

If indeed these municipalities are not able to sustain this on their own — and I'm hearing a fair bit of dis-

cussion that we are going to have "have-not" and "have" municipalities, so clearly there could be people who fall into this category — and you talk about values and so on and what you see as being part of the equation to design this formula, would you feel that the government should, however, if they decide to go this route and take up your suggestion, have further consultations, perhaps with AMO or ROMA, in order to make sure that it's not a government-driven solution but a solution that is designed with everyone concerned?

Mr MacKinnon: Yes, that would be a fair approach to take. I think AMO could shed a lot of light for the government on where their priorities lie in this whole process. I don't think it's fair that a municipality should make a substantial gain on the backs of other Ontario municipalities, so if they get a whole pile of grants and then they just want to turn around and flip that infrastructure over, then obviously they should give that money, that support back that they've received from the province. By the same token, as I said, a grant you got five years ago doesn't compare at all to one you got 15 or 20 years ago.

Mr Hoy: I would agree with you on that. As well, I suppose, they should talk to these utilities across Ontario as well, as with these municipal representatives from the groups I mentioned.

The Chair: Mr Hoy, I'm sorry to interpret but, as one gentlemen said this morning, time has evaporated. Mr MacKinnon, thank you very much for coming today to bring your thoughtful presentation to us.

Mr MacKinnon: Thank you. I appreciate the opportunity. Good luck.

WATER TECHNOLOGY INTERNATIONAL CORP

The Chair: We'd now like to invite Mr John Neate to come forward, representing Water Technology International. Hello and welcome, Mr Neate.

Mr John Neate: Thank you very much, Madam Chair. I have a text that was prepared, and I believe it has been handed out.

Water Technology International Corp is pleased to have the opportunity of making this presentation to the members of the legislative committee reviewing Bill 107. As a progressive environmental technology and services company, WTI is supportive of initiatives to improve the efficient delivery of services in the province in a manner that will protect the environment.

First of all some background on WTI: Water Technology International Corp is an employee-owned company that was established in 1992. The company provides specialized consulting services and operations knowhow to industrial and government clients. It develops and demonstrates environmental technologies and it participates in commercial ventures.

WTI's principal areas of domain expertise are prevention of pollution through the application of recovery and reuse technology, control of pollution through the selection and optimization of cost-effective pollution control technologies and practices, and remediation of contaminated soils, sediments and groundwater.

WTI has equity-based joint ventures in British Columbia, Mexico and Poland, and our headquarters is in Burlington, Ontario.

In 1996, WTI took over as the private sector operator of the Wastewater Technology Centre in Burlington. The Wastewater Technology Centre is a federal government water and waste water technology development and demonstration facility that provides technical support in the areas of regulatory development, technology assessment and evaluation, technical program delivery, and demonstration of Canadian environmental technology products and services. The contract to manage the Wastewater Technology Centre currently represents about 50% of WTI's overall revenues, and I should add that our employee group of just over 100 employees includes about 25% of those employees formerly with the federal government.

The novel management approach that was implemented at the Wastewater Technology Centre in 1991 is an example of an effective public-private partnership. Under this arrangement, the federal government continues to own the facility and equipment but contracts with a private sector company, WTI, for technical support, defined annually on the basis of specific deliverables required by the federal government. A version of this privatization model has been successfully applied for more than 50 years in the United States for the management of strategic mission-oriented work at national laboratories in the areas of defence and energy. So we certainly know a fair bit about privatization and public-private partnerships.

With that background, I'd like to make these overall comments and recommendations to the committee:

(1) We are supportive of efforts to streamline and improve the efficiency of government program delivery.

(2) We believe the private sector can play a lead role in the efficient delivery of programs, including the management of water and waste water infrastructure.

(3) The decision to transfer responsibility for the management of water and waste water treatment facilities to municipalities makes sense provided that these municipalities have the capacity either to operate these systems or to evaluate the quality of operations services that can be provided by private sector companies.

(4) Ontario municipalities should establish full-cost, user-pay accounting practices for the development and operation of water and waste water infrastructure.

(5) In redefining the way in which government and the private sector do business in Ontario, attention must be given to ensure that regulatory responsibilities are clearly defined and effectively administered. This includes ensuring that appropriate regulatory standards are enforced and, in some cases, improving on these standards. It also requires the implementation of appropriate quality assurance and quality control systems for those laboratories responsible for regulatory programs, as well as for those which support the operation of water and waste water facilities.

(6) Our strategy for moving forward should build on Ontario's strengths and encourage the development of a domestic market for Canadian environmental technology and services companies. This will allow these companies

to expand into international markets, creating new jobs and opportunities for Ontario products abroad.

What about WTI? First of all, I think it's understood that managers and operators of water and waste water treatment plants will continue to face increasing pressure to do better with less due to more stringent regulations, public expectations, community growth and fiscal restraints. With over 25 years' experience in the optimization of water and waste water infrastructure, WTI will continue to provide managers and operators with practical approaches to get the most out of their facilities and personnel.

Thank you for this opportunity to participate in shaping Ontario's future, and I guess we can handle some questions if that's appropriate.

Mr O'Toole: Thank you very much, Mr Neate. You bring an interesting perspective this morning. First, theoretically, would you consider yourself a private sector company?

Mr Neate: Yes, we are a private sector company. We've been a private sector company since 1992, and in 1996 we took over the operation of the Wastewater Technology Centre.

Mr O'Toole: I'm quite interested in point 4 in your recommendations, "full-cost, user-pay accounting practices." Do you believe realistically that any system should be not necessarily profit-motivated — that's part two of this question — but certainly cost-recovering, meaning full depreciation cost, cost of capital, all the things that are full accounting? Do you think the system in place today with the water and sewer plants practises these business principles?

Mr Neate: Not at the present time. I think the trend should be towards establishing such a system and capturing those costs.

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Mr O'Toole: Do you think the move to move responsibility and authority into one area, ie, the municipality, with this incumbent business practice is the right strategy? Because there's really only one taxpayer.

Mr Neate: We believe that is indeed a sound strategy, although we recognize that there are certain portions of the province that may be faced with certain difficulties, given the kinds of infrastructure they may either have in place or may require. Our understanding is that part of the legislation does accommodate for some of those circumstances.

Mr O'Toole: The province would step in.

Mr Neate: Yes.

Mr O'Toole: On number 4, the criticism we've heard this morning is the fact that you may have an ulterior motive, ie, profit. Could you explain that? Is profit a result of efficiency or focusing on standards? How do you get profit?

Mr Neate: Certainly in our company there are really a couple of ways where we can provide sufficient incentive to our staff to go the extra yard and make our business competitive and ensure that it survives. Various ways of doing that, of course, you've touched on: improving the efficiency through which you undertake your business; other areas are focusing on areas where there are longer-term markets, and again, infrastructure is

one of those. So, again, having something you can plan on through multi-year contracts makes it much easier to then ensure that the efficiencies of performance and profitability are achieved.

Mr O'Toole: Do you think there should be competition, both public and private sector, within any market to ensure that the customer is well served?

Mr Neate: Yes, I do.

Mr Galt: The previous speaker found a shotgun to eliminate OCWA. Would you support a plant that had been transferred to the municipalities; that maybe OCWA for operational purposes should be privatized? Would you be thinking along those lines, to compete with other private companies?

Mr Neate: Well, yes. Unfortunately I came in during the middle of the presentation and I am not quite sure where the shotgun thing came from.

Mr Galt: Elimination.

Mr Neate: We're looking for shortcuts here, aren't we? I think in general terms the concept of competition makes sense, but I do agree — I think at the end of the discussion there were some concerns about consultation and ensuring that we don't shoot ourselves in the foot with the shotgun, so to speak. I think there are elements of caution required in certain parts of the province.

The Chair: To the Liberal caucus.

Mr Hoy: Thank you for your presentation. I had a question but I think it's been answered. You actually will not only advise and give technical expertise to clients but you actually will operate plants?

Mr Neate: Yes, we have indeed, and I attached some background information. We do operate some small systems, but these are typically either industrial systems or almost one-off-type systems that have particularly unusual characteristics in terms of the types of contaminants. We operate one system in Gloucester, Ontario, and we're now putting together the treatment facility for the Columbia Icefields in Alberta.

Mr Hoy: Do you envision your WTI expanding beyond just giving technical expertise but actually the delivery of your knowledge hands on?

Mr Neate: Again, in this world, to survive one has to be flexible and adaptable. Our business actually has three components to it. One is the advisory role. That has been traditionally our roots and that's probably what we do best. In fact, frankly, we consult more with government than we do with private sector clients in terms of providing technical advice.

The second aspect is that we do have a business strategy that is looking to take Canadian technology and commercialize it, so there's an actual marketing and sales strategy within our company.

The third and perhaps least defined area for us, because of the constant change that's going on here in the province — and I think this legislation is trying to bring clarity to the way business will be done — is the operations area. We've tended to focus more on clients who, after they see what great advice we can provide them, say, "Hey, how about running this thing for me?" So we get in it more at the back end as opposed to a front-end, clearly stated strategy.

The Chair: We'll go to the NDP caucus.

Mr Laughren: I enjoyed your presentation. You've had an interesting number of years. I was puzzled by the ownership in the business you do. You took over as the private sector operator of the Wastewater Technology Centre, right, back in 1996?

Mr Neate: Yes.

Mr Laughren: Then you say that represents 50% of your revenues. So who actually owns Wastewater Technology Centre?

Mr Neate: The building is owned by the federal government and we pay rent for the use of the facility. We also have a contract with the federal government to deliver something in the order of \$7 million to \$8 million worth of technical services on an annual basis. In fact, we're the third contract holders. The gentleman who invented the concept of privatizing these government facilities is Dr Stuart Smith, and subsequent to Dr Smith's contract, Philip Utilities Management Corp had the contract for two years, and now WTI has the contract. We have two years remaining on our contract. It will terminate March 31, 1999, and of course we're hoping to do such a great job that they'll want to extend with us.

Mr Laughren: Sorry to be a little slow on this, but help me out, if you will. Wastewater Technology — you say the building is owned by the federal government.

Mr Neate: Yes.

Mr Laughren: Who owns the actual operation? You do now, or they still do?

Mr Neate: Our company has the ownership of all the intellectual property that we develop in operating that facility.

Mr Laughren: And the assets?

Mr Neate: The assets, being the physical plant itself, the facility, are owned by the federal government and we pay rent. It's a very common management model referred to as a GO/CO, very well established in the United States since the 1940s, a government-owned contract or operated concept, a very interesting way for your next deliberations when you look at the incredible capacity that you've built up in Ontario for doing research and technology development. It's a fascinating model for bringing the private sector on board as a partner to indeed get the biggest bang for the buck out of these facilities.

Mr Laughren: So 50% of your business then comes from the federal government.

Mr Neate: At this point, yes, although, as I referred to earlier, the product commercialization business that we have just launched, which we believe will grow exponentially, will eventually take over and well surpass those revenues.

Mr Laughren: What percentage of the remaining 50% is also with the public sector?

Mr Neate: We probably do something in the order of the remaining amount, one third of that business, I would say, with various levels of government: municipal governments, provincial governments.

Mr Laughren: Two thirds of your business is with the public sector, roughly, and a third is private sector.

Mr Neate: Yes, that would be a reasonable mix.

The Chair: Mr Neate, we appreciate your taking the time to come to the committee this morning. Thank you for your advice.

SHEILA DAVENPORT

KEITH OLIVER

The Chair: Now I'd like to call Mr Keith Oliver, representing a group of city councillors from London. Please introduce yourselves. Welcome. The presentation time this morning is 15 minutes and that includes your presentation as well as questions from the caucuses.

Mrs Sheila Davenport: Thank you very much. I am the group of city councillors. There are two who aren't here, and one I'll keep looking over my shoulder for.

The Chair: And your name is?

Mrs Davenport: Sheila Davenport. This is Keith Oliver, who is beside me. Keith is an active member of the Urban League of London, the newly formed London town meeting and a member of the London social planning council. I am a city councillor and presently chair of the board of health, but we are here speaking as individuals today, because I know you have had presentations from boards of health and the city of London as well. Joe Swan, who I am sure is going to tear in in just a minute, is a city councillor and presently chair of the community and protective services committee of council. Megan Walker is the fourth member of this delegation. She is also a city councillor, but Megan has just assumed another job and is with us only in spirit today.

We appreciate the opportunity to make this presentation on a matter that encompasses so many issues of vital importance. We see those issues as ranging from the reliable delivery of two essential services to our long-held belief as a society that such services should be available to all.

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While all of us in this delegation, the two of us, are intimately involved with our community, none of us is an expert on the subject of the delivery of water and sewage services. What we do have to offer in this debate is the argument in support of the principles of fairness and equality that must be maintained in the delivery of all basic services. In that capacity, and with these references, we offer the following basic recommendations:

With regard to the delivery of drinking water, the provincial government must ensure the following: Clean, safe drinking water must be available to all Ontarians at all times; such water must be available in sufficient quantities and without interruption; the ability to pay must not be a factor in achieving the above and must only be used to discourage any inappropriate use of the resource or the system. To achieve these objectives drinking water must always be considered a public asset, controlled by the public through their elected representatives.

With regard to the provision of sewage services, the provincial government must ensure the following: All Ontarians at all times must have access to a system of adequate sewage disposal; such a system must adequately address issues related to public health; such a system must do no harm to the natural environment; the ability to pay must not be a factor in achieving these and must only be used to discourage misuse of the system. To achieve these objectives sewage systems must always be considered a public asset, controlled by the public through their elected representatives.

Mr Keith Oliver: By the way, you'll all have copies of this. We don't have them at hand, but you'll have them later this afternoon. In support of the basic recommendations, we make these specific recommendations:

First, the provincial government should rescind the provision in Bill 26 that permits a municipality to sell off a public asset without holding a public referendum.

Second, the provincial government should conduct a full public inquiry into the delivery of drinking water in Ontario and the ability of the present system to achieve our basic recommendations.

Third, until such time as the above have been accomplished by the government, it should remove the Ontario Clean Water Agency from the group of agencies it is considering for privatization.

In support of our basic and specific recommendations, we offer the following testimony: Through our public institutions we maintain and foster the concept of the common good. It's well recognized that as individuals we are not all equal in our abilities, in our education and in our upbringing. Some of us chose the right genes, the right parents, the right social and economic background, while others did not. The law and the notion of basic rights are an attempt to address these inequities and create equal opportunities and basic services available to all. Our personal income tax system and the responsibility of the provincial government to establish and enforce minimum standards has been our way of ensuring that all individuals and communities have equal access to opportunities and services, as well as the financial ability to meet them. This principle is fundamental to our shared values of respect for the individual and must never be compromised.

The legislation contained in Bill 107 raises the possibility of uneven standards for the provision of water and sewage services across this province, and turning this wonderful province of ours into a discordant group of have and have-not communities.

There's also the issue of public versus private ownership. Public control and ownership of public services is a long-standing practice in Ontario and in Canada. It has evolved and found its many forms and expressions for very specific reasons. Public services such as the supply of electricity, water, sewage services, roads etc are not conducive to free market competition. They rely on a fixed infrastructure serving a fixed clientele.

By the fact that flexibility in supply and the ability of the consumer to exercise choice is absent, the privatization of such public services can only complicate their delivery. The specific result of the privatization of water and sewage services would be the creation of for-profit monopolies. This in turn would result in an increase in the level of government interference and regulation. We do not believe the present government has this objective in mind.

The importance of unimpeded access to drinking water as a public health issue: Historically, some of the greatest advances in public health have occurred when the state has acted to guarantee the delivery of safe and adequate supplies of water and has ensured that waste was properly disposed of. Cholera and dysentery have been eliminated by such means but can recur at any time. The recent

appearance of cryptosporidium should cause us to be concerned as to whether or not existing standards for the delivery of drinking water are in fact high enough.

Drinking water is an increasingly limited resource. We're under the illusion that we have unending supplies of water. In fact, 0.007% of the world's fresh water is available for human consumption, and this according to a recent study of the Worldwatch Institute. While we here in Canada and Ontario appear to have access to an abundance of fresh water, we have a moral obligation to manage, protect and conserve it.

One of this country's greatest resources is its fresh water. Along with the American share of the Great Lakes, Canada possesses two thirds of the world supply of available fresh water. We should be a model for the rest of the world as to how to shepherd and manage a natural resource of this kind of importance and magnitude. How can we tell the Brazilians to conserve their rain forest if we abuse and squander our fresh water? Public control over fresh water is essential.

Finally, the experience of the United Kingdom: The experience of the United Kingdom in privatizing its public water supply system should be a cautionary tale for all of us. Starting in 1988 under the Conservative government of then-Prime Minister Margaret Thatcher, 100% of Britain's public water delivery system was privatized and is now in private hands. The problems associated with the private enterprise takeover are well chronicled and we believe result in a misfit over the privatization of a public service. The failure of the water system, the problems that have occurred in the UK, are well chronicled in the report commissioned by the Ontario Municipal Water Association, entitled *Ontario Water Industry: Models for the 21st Century*, and edited by Dr Neil Freeman. The facts are there for all to see.

The results of that experience should never be forgotten in this debate: reduced investments in maintenance and delivery systems, increased leakage rates, escalating cost to the public, the fact that customers have been cut off from water services due to an inability to pay, the fact that water shortages have been experienced and the fact that water is now being thought of in the UK as a tradeable commodity and has already been exported from Scotland to Spain. Ironically, that happened in 1995, during a water shortage in the rest of the country.

This constitutes our presentation and summarizes our concerns and recommendations. We have no argument when the implications and benefits of privatization are well studied and are justified. We do not believe this is the case with Bill 107.

Thank you for your time. We will be forwarding copies of this to our four local MPPs and asking them for their response and asking them how they will vote on this bill.

Mr Hoy: I assume you're going to provide copies to everyone here.

Mr Oliver: Yes.

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Mr Hoy: Thank you very much. You mention in the opening the ability to pay, and in your summation you talk about for-profit. I assume, through those two statements that each one of you made, that you believe the

delivery of water should be cost recovered but not for-profit. Is that right?

Mrs Davenport: That is correct.

Mr Hoy: That cost recovery — you stated that you thought it should also apply to abuse in some way. Did you say that the ability to pay may be used in some forms of abuse?

Mr Oliver: In some cases water is metered. Fine. But when it comes to fees, we believe, and this applies to all areas of user fees, that fees should be used not to discourage the behaviour you want to encourage but to discourage behaviour which abuses the system, abuses the resource. Paper bag garbage is an example of that and has worked quite successfully: a couple of bags free and the extra ones you have to pay for. You're discouraging people from adding more waste into the system, encouraging them to recycle. It's a wonderful example of a good, well-considered use of fees. That's the principle we're addressing here.

Mr Hoy: Did you have a comment?

Mrs Davenport: Yes. I think we've argued this around fees for libraries. We feel to charge for the use of libraries is something that is discouraging use and we're looking at the other side of the coin. We need to encourage good practices.

Mr Laughren: I was taken to task this morning by somebody from the private sector for not listening to the good stories coming out of Great Britain about the privatization of water there. Perhaps I am guilty; I don't know. I have read the literature and I haven't seen any good stories, but perhaps you could help me out here. Have you seen any good stories extolling the virtues of privatization in the UK?

Mr Oliver: You never hear the good news, right? That's not an uncommon occurrence. On the other hand, the information that I'm seeing — again, we're addressing principles here and those groups of principles that we put out here in our basic recommendations have to be adhered to, as far as we're concerned. The details are up to you and the other experts in the water industry.

As far as the bad news is concerned, from the information that I've seen — a lot of it comes out from the report that I referred to, the Ontario Municipal Water Association — the fees have gone up in a general level 150% or 160% from what they were when the system was in public hands. The leakage rates have increased, not a monumental increase, to be fair, but still have increased, on the average, I believe, 10% to 20%. But the evidence is that the system is not being maintained.

It's understandable, because out of the revenues generated by the system, you have to extract some financial reason for a shareholder to get involved. The salaries of executives are competitive with the public market for such services, so I don't think there's any question but costs will go up. If costs will not go up or costs are going to go down, I'd like to see the studies, and as far as I'm concerned, the studies don't exist.

Mr Maves: My question is a brief one. The last time I did some research on the fresh water supply was in my university days, and my recollection is that there are billions and billions of gallons of fresh water that flows north into the Arctic that's not used for human consump-

tion because it's simply not tapped. The infrastructure is not there to use it and we haven't needed to tap that yet. You said that only .007% of the world's fresh water is available for public consumption.

Mr Oliver: Excuse me, of the world's water.

Mr Maves: Oh, the world's water. So there's a great deal of fresh water available for consumption, it's just that we haven't got the infrastructure to get that yet?

Mr Oliver: No. Let me go back over that quickly: .007% of the world's water is fresh water and is available for human consumption. We seem to think it's an endless supply. It's not. If you're talking about diverting water from the Arctic, learn the lesson of Russia and Lake Baikal. That's why Lake Baikal disappeared, one of the most important fresh water fisheries in the world.

Mr Maves: I wasn't talking about diverting anything. I was confused as to that statement and wanted clarification.

Mr Oliver: I can get you more information if you want.

The Chair: On behalf of the committee members, I thank you for taking the time to come before us this morning. We'll look forward to reading the entire presentation this afternoon.

ONTARIO MUNICIPAL WATER ASSOCIATION

The Chair: I'd now like to call our final presenter of the morning, Mr Jim Morris from the Stratford Public Utility Commission. Welcome.

Mr Jim Morris: Ladies and gentlemen, it's a good day, and thank you for having me here today. My name is Jim Morris. I'm past president of the board of directors of the Ontario Municipal Water Association, and that's who I'm representing today. I am at present chairman of the Stratford Public Utility Commission.

We are pleased to be here today to comment on Bill 107. Our organization speaks for more than 200 public water authorities across the province, which supply drinking water to more than eight million Ontario customers. We represent people who are directly involved in the supply, treatment and distribution of water in this province, and our association takes a great deal of interest in all matters relating to the provision of drinking water. Our members come from every region of the province and bring a wide cross-section of expertise and specialized skills to provide direction and leadership on policy issues for the association.

Within our mandate, we promote the public utility concept as a system that offers safe, reliable drinking water on an at-cost, fee-for-service basis. Through this system, waterworks are financed entirely by dedicated revenues, with no subsidy from the local tax base, and are directly accountable to the public. This approach is consistent with the current emphasis on full financial transparency, removal of service cross-subsidization and the levy of user fees for public services.

We think the public utility concept is an approach that has broader relevance and applicability as a model for all utilities and water systems across the province. We believe public utilities serve the best interests of the customer in terms of cost, efficiency and reliability.

This brings me to our comments on Bill 107. In many respects this bill raises more questions than it answers. It highlights the government's lack of guiding policy on the provision of water in Ontario and does not provide a strong enough deterrent to privatization of all local water systems across the province.

The combined effect of the government's recent barrage of legislation, such as changes to the Municipal Act and the Municipal Elections Act, is surely going to have an impact on the ability of Ontarians to have a say in the supply and distribution of drinking water.

We are also concerned that in its haste to exit water business completely and to restructure the way our municipalities are run, the government is abdicating its responsibilities to ensure the long-term viability of our public water systems. By offloading all provincial costs on to the municipalities, it becomes difficult for local governments to maintain dedicated revenues for water services and opens the door to decline in infrastructure and a patchwork of operational standards. Municipalities will be forced to cross-subsidize other services with water revenues, which creates an incentive to make up for lost revenues through hidden taxes in water rates to the customer.

In our view, the government has a clear role to provide a focal point for standards and to ensure enforcement and quality control. We also believe that the province has a strong responsibility to oversee public health, the natural environment, and to ensure the availability of basic, vital infrastructure regardless of a municipality's ability to pay.

I'd like to add that recent media reports on the steep decline in enforcement, caused by layoffs and cutbacks, erodes our confidence in the province to ensure the safety and long-term health of our water systems.

We are not advocating that the province micromanage our water systems. Instead, we are calling for a framework policy and government commitment to ensure the high quality of drinking water to our customers, a level of quality that is often taken for granted. If it is not the role of the provincial government to provide this coordinating function, what will occupy the vacuum? What will be the consequences?

Public water supplies are an essential service and should not be compromised by unstructured restructuring. There must be a viable long-range plan for the continued supply of clean, safe drinking water. Our association would be happy to work with the government to develop such a plan.

Our concerns also centre on potential privatization of municipal water systems. Bill 107 contains section 56.2, which imposes an obligation on municipalities to repay provincial grants if they propose to sell all or part of their water or sewage works. This clearly constitutes only a backhanded and token obstacle to privatization and ensures no such result. The measure merely guarantees that the province will pocket at least some of the windfall collected by the municipalities. When no longer willing or able to afford the cost of maintaining and operating the plant, the municipality sells it to the highest bidder.

More importantly, the government makes no commitment to the notion of a public system, either through stronger legislative measures or through moral authority.

Notwithstanding the number of municipalities that have never received any provincial grants and therefore would have nothing to repay, the Ontario Municipal Water Association believes that privatization of our water systems will cause the irreversible deterioration of what we take for granted as a high-quality, low-cost vital service; nor is it a course of action desired by Ontario voters.

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I want to share with the committee some information from a poll we commissioned and carried out in February of this year by Pollara. This is a survey of 1,263 Ontarians 18 years of age and older. I think the results speak for themselves:

Eighty-six per cent of Ontarians believe that drinking water is not a commodity and should be provided to customers at cost. Only 8% believe it should be sold for a profit.

In our survey, 80% of Ontarians feel that the money they pay in water rates should be used solely for improving the water system and not other municipal services.

Finally, 81% believe that the public should be consulted when the government is contemplating key changes in how our drinking water systems are run.

These are unequivocal numbers. A year ago we conducted a similar poll and since then it is clear that there is growing awareness and concern about this issue among Ontario residents.

Our association has a five-point plan that addresses these concerns and offers a time-tested, workable structure and process for the operation of municipal services. Our drinking water is far too precious a resource to leave to chance or experimentation.

Our solution is to implement the Ontario Municipal Water Association's five-point plan. It is as follows:

First, we advocate full financial transparency to ensure that water utility rates continue to be based on fee-for-service and full-cost recovery and that revenues must be dedicated only to public utility purposes. Water rates should not be used to cross-subsidize general municipal services.

Second, the Ontario Municipal Water Association calls for direct public accountability. We believe it is important to secure the autonomy of water utilities from municipal councils in order to ensure accountability to customers and financial separation from the municipality. Municipalities should administer tax-supported services, while public utilities provide rate-based services. Where municipalities control water service, the system should be run in a businesslike manner with dedicated revenues.

Our third point is to capture natural efficiencies through integration of utilities. This involves seeking statutory amendments that would encourage the integration of a municipality's public utility functions, including water, waste water and electricity, into a single autonomous public utilities commission to capture the natural efficiencies that go with it.

Fourth, we need full cost-benefit studies before privatization. Our policy would require that privatization of water services should not occur without a full and open cost-benefit comparison with the public utility concept, including a full accounting of all consequences of all contract commitments.

Finally, we believe in the value of meaningful public input. Our plan would require that there be public consent and input through referendums and other consultation before public water utilities are dissolved or transferred to a council function or franchised to the private sector.

It was our pleasure to be here today to express our ideas on the operation and distribution of water in the province and our views on Bill 107. We want to work with the Ontario government to develop a credible plan, a blueprint for the future, for Ontario's water industry and for the water customers in this province. Thank you, and I would be happy to answer any questions.

Mr Laughren: Mr Morris, I don't want to discourage you, but what you want ain't what they want.

I'm confused about the repayment thing, though. Perhaps you could help me. You don't really like the idea — I think that's what you said — that the repayment of loans must be given back to the government if you privatize the system.

Mr Morris: That's the way we understand it.

Mr Laughren: What I didn't understand is whether you were in favour or opposed to it. It sounded like you were opposed to it.

Mr Morris: We are and we aren't. We understand they're going to do that. Some smaller municipalities that seem to feel they can't afford to operate their facilities will look and say: "Maybe we can get \$2 million or \$3 million for this. We only owe the government \$600,000 and we're going to be ahead \$1 million-plus. We'll take it." But they forget that down the road the guy who's putting in the \$3 million or \$4 million has got to get that back, plus interest and profit, for his company. The water or sewage rates he'll charge are going to incorporate that, and you're going to pay. We feel that the idea of the government getting some money back is really negligible.

Mr Galt: Thank you for your presentation. I should bring to your mind that this bill is about the clarification of who has what responsibility and ensuring that the 25% of the municipalities that don't presently own will own in the future, as do 75% of the others.

You make reference to standards and a patchwork across the province in the different authorities. The standards ensuring that clean drinking water will be available will still continue to be a role for the Ministry of Environment, and I can assure you that those tough standards will remain in place. We have something like 230 of these facilities presently owned by OCWA. I believe, if I remember correctly, Stratford is one of those.

Mr Morris: We own it; they manage it. It's the first one in Ontario.

Mr Galt: Are you one of those asking to have it transferred to the community?

Mr Morris: No. My understanding from the mayor is that OCWA is going to run it on a fee-for-service.

Mr Galt: To operate it. But to own it?

Mr Morris: My understanding is that the city owns it and always did own it.

Mr Hoy: Thank you for your presentation. Of your five-point plan, number 4 the government would probably agree with and say, "You go ahead and pay for that study and you'll have what you're looking for." But I would

expect that you're wanting the government to lend some moneys towards these requirements.

You have a lot of experience municipally and with the Ontario Municipal Water Association. Do you think maybe this bill is coming a little too fast? Throughout Ontario, we don't have the restructuring of municipalities finished yet. Many municipalities don't know whether they're going to be single-tier, two-tier, unicity, unicity. Do you not think to put this forth today is a little in advance of some of the other things this government wants to do, that this is just a little too hurried?

Mr Morris: To be quite honest with you, I didn't think I'd be sitting here today representing the Ontario municipal waterworks. I would assume that Perth county had taken over Stratford and there was no more utility, but apparently that isn't the way it is right at the moment. I think we're about a year ahead of what we should be doing. What they should do is get those boundary lines straightened away on what they're going to do and then decide how they're going to treat the utilities and the water infrastructure. Then I think they'd be going in the right direction. They've just got the cart before the horse in trying to do too much at the same time.

The Chair: Thank you very much, Mr Morris. We appreciate you coming before us with your advice today.

Colleagues, that concludes our morning presentations. We'll recess until 2 o'clock this afternoon.

The committee recessed from 1230 to 1400.

CANADIAN AUTO WORKERS LOCAL 1520, ENVIRONMENT COMMITTEE

The Chair: We'll resume our afternoon session of the resources development committee hearing on Bill 107, the Water and Sewage Services Improvement Act. Our first presenter this afternoon is Jim Mahon from the Canadian Auto Workers environmental group. Good afternoon.

Mr Jim Mahon: Good afternoon. My name is Jim Mahon and I am here today to speak on behalf of the Canadian Auto Workers, Local 1520, environment committee. I am chairperson of the committee, our union's environmental representative at the St Thomas Ford assembly plant and a long-time environmental activist in the London area.

Ontario first passed public health and municipal waterworks legislation in the 1880s. This was supported by more extensive public utilities legislation in the early 1990s. During the 1950s, the province greatly expanded its role in safeguarding water resources by enacting the Ontario Water Resources Commission Act. This act created the Ontario Water Resources Commission, an independent body that enjoyed general supervisory and regulatory authority over water quality and water use within the province.

In 1993, the Ontario Clean Water Agency was created by the province as a crown corporation modeled on the Ontario Water Resources Commission Act. The justification for the Ontario Clean Water Agency was that it protected human health, promoted water conservation, ensured public accountability and supported provincial policies regarding land use and development. The current

provincial government, with the introduction of Bill 26, made it easier to dissolve water or public utilities without electoral assent, paving the way for Bill 107. At the same time, the provincial government has virtually eliminated the municipal assistance program which provided capital grants for municipal water and sewage projects.

It is our belief that water is essential to life and that the protection of our water is part of our government's responsibility to its taxpayers. After all, is that not why we need our government, to oversee and to provide things that are considered part of the public good?

We are blessed with a good supply of water in this country, but history has shown that water and natural resources can be contaminated or squandered if not managed very carefully. That was one of the reasons that our water and sewage infrastructure was created in the first place: to provide clean water and protect the health of our citizens and our environment by providing a proper sewage system.

London has experienced at first hand the commitment of private enterprise to the preservation of our environment, water and sewage system. In 1980, the Ministry of the Environment found elevated concentrations of polychlorinated biphenyls, PCBs, in shiners collected from the Thames River at the mouth of Pottersburg Creek. Subsequent investigations by the Ministry of the Environment found the source to be a number of industries, the main source being Westinghouse Canada Inc, a plant on Huron Street in London. This plant reconditioned transformers and was found to be the main culprit responsible for the contamination, although several smaller contributors were pinpointed as well.

Our capitalist system is one dedicated to the worship of the dollar. Private enterprise in Ontario fulfils this goal. That goal is not always compatible with that of public need or good.

During the Pottersburg Creek cleanup I worked on the public liaison committee and on the technical review committee. As a member of these committees I became very aware that the condition of the sewer lines in our city vary greatly in age and condition. There was then, as I am sure there are now, some eight-inch sewer lines made of wood in the east end of London.

I was also made very aware of the millions of dollars spent. Moneys were collected from the public — the taxpayer — and then spent to resolve a problem created by private enterprise. Money was of course also collected from the corporations involved, but it did not begin to cover the full cost of the cleanup of the environment, and there was no assessment of costs to human health ever undertaken. My point is that the private good and public good are sometimes totally different, finances being the driving force in the case of a private corporation, whereas a government or public institution first considers the public good or such factors as public health, environmental integrity and moral responsibility.

As far as we're concerned, Bill 107, on that basis alone, should be scrapped or at least withdrawn and written with the direction given that it is to be a priority to protect public health and environmental integrity and to maintain moral responsibility within our public water and sewer works.

Bill 107 proposes to transfer Ontario Water Resources Commission resources to the municipalities, which, in turn, are free to sell off waste treatment plants or sewage treatment plants to the private sector. Our current Minister of Environment and Energy has indicated that if a selloff were to occur, the province would still maintain and enforce rigid water quality standards.

In previous years, this claim might have had some credence; however, given the substantial staff reductions and budget cutbacks experienced by the Ministry of Environment and Energy, including abatement, investigation and enforcement departments, we question the ability of the Ministry of Environment and Energy to adequately enforce the existing standards, let alone improved water standards.

It is important to note that in other environmentally significant industries the centrepiece of the legislation is an independent regulatory body. For instance at the federal level, the National Energy Board generally regulates intraprovincial and international energy exports and related activities. Here in Ontario, the Ontario Energy Board regulates the natural gas industry and reviews Ontario Hydro's bulk power rates. If Bill 107 proceeds without the creation of an independent regulator, the residents of Ontario will be virtually powerless against private water and sewer monopolies that are likely to result under Bill 107. Consumers of water and sewer services generally do not enjoy the option of switching to a competitor or just not using the product. Water is basic to life. It is needed for the safety and health of every individual and thus can be distinguished from other natural resources and commodities.

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Bill 107 makes absolutely no provision for an independent public regulator to safeguard the public interest as water and sewage services are transferred, amalgamated and ultimately privatized. In our opinion, this is one of the most objectionable aspects of Bill 107. Therefore, if Bill 107 proceeds in a form that does not prohibit privatization, then it must be amended to include provisions establishing an effective, efficient and independent public regulator.

Bill 107 fails to enact or entrench the essential elements of the long-overdue safe drinking water act. Such legislation has long been advocated by public interest groups in Ontario and would include the following components: Entrench a clear public right to clean drinking water; establish standards limiting the amounts of contaminants in drinking water that may adversely affect human health; establish standards that address contaminants that may cause odour, appearance or useability problems with drinking water; impose a positive statutory duty on the Ministry of Environment and Energy to set and enforce drinking water standards; require public and private water suppliers to periodically sample, monitor and report on the quality of drinking water; promote research into alternative water treatment technologies that eliminate organic chemicals in the water treatment process; establish appropriate prohibitions, penalties and investigation and enforcement provisions; require public and private drinking water suppliers to provide timely public notice of operational problems,

failure to carry out prescribed testing or violations of prescribed standards; and create a statutory cause of action permitting individuals to sue violators of the act or standards.

In the opinion of the CAW Local 1520 environment committee, the need for safe drinking water legislation does not depend on the outcome of the current privatization debate. Regardless of whether water services are under public or private control, Ontario residents deserve tough drinking water laws and regulations, as opposed to unenforceable objectives, guidelines or self-regulation, to ensure safe and adequate supplies of clean drinking water. Privatized water and sewage services in Ontario would make it an even greater priority for the province to pass safe drinking water legislation to enhance the accountability of private operators if and when problems arise. In short, the province must act now to ensure that drinking water is protected at the point of consumption.

In the opinion of the CAW Local 1520 environment committee, Bill 107 is seriously flawed and the whole concept or intention of the bill must be re-examined on the basis of public good, environmental protection and preservation of public health.

Thank you for taking the time to come to London and giving us this opportunity to express our concerns regarding this seriously flawed piece of legislation.

Interruption.

The Chair: I would just remind the members of the audience that this is a standing committee of the Legislature. We must abide by the same rules as in the Legislature, which means no clapping or displays from the audience.

Mr Galt: Thank you for your presentation. I have just a few comments on it, particularly as it relates to the intent to sell. This bill is about clarification of who owns and who has responsibility. In this case, we want all municipalities to own the waste water treatment plants and the water treatment plants; right now, 75% do and 25% don't. That's really what this bill is about. There are limitations in there as far as selling in that they have to return any of the subsidies or any of the grants given out by the province to limit that. We do not want to see the kind of things often brought up about the British system. That is not our intent. Our intent is to ensure that it does stay with the municipalities.

As it relates to the tough standards and the things you have listed, the tough standards will remain there; they will be the responsibility of the Ministry of Environment and Energy. We will see that there is safe, clean drinking water coming out of those taps and also that the waste water treatment plants will be properly operated according to the standards.

Mr Mahon: Will there be safe drinking water standards put in place?

Mr Galt: The standards are there and will be kept there.

Mr Hoy: Thank you very much for your presentation this afternoon from Local 1520. I took particular note that you stayed within the environmental aspects of your committee and did not wade into what might happen to workers. Your presentation is strictly on environment, and

I appreciate that very much and noted that in your presentation.

In what Dr Galt has spoken about, we have to be reminded of the fact, however, that the budget of the MOEE has been cut by a third and their staffing is down a third. There are many presenters, like yourself, who are concerned about the future as it pertains to inspection of pollutants and other aspects of water and sewage.

On page 5, in your second-last paragraph you talk about tough drinking water laws and regulations, whether it is privatized or not. I take note of those comments from you.

Mr Laughren: Welcome to the committee. I noted your concern about the ability of MOEE to adequately enforce the existing standards, let alone any improvements. I wondered what you base that on. Do you have any experience of MOEE not enforcing existing standards?

Mr Mahon: In a way, I guess it's a tough question, in that a friend of mine from the Ministry of Environment is in the audience, but yes, I do. I've had the same experience with the Ministry of Labour. I guess everyone realizes the budgetary constraints and so on, but you can put all the directions on the ministry you want, if you don't have the staff in the enforcement branch and the inspection branch to follow through on that direction, it just isn't going to happen.

Mr Laughren: The reason I asked if you had any experiences is because, and others who were here this morning will bear with me, just recently I had a situation in Sudbury, where I live, in that area, where the Ministry of Environment didn't or couldn't — don't ask me why — send anybody to court to press charges against Inco, and the judge threw out the charges, which were very serious charges, threw them out of court. You ask yourself, "Why was MOEE not there, representing the interests of the community?"

Mr Mahon: I'm chairperson of a group that is currently involved in discussions surrounding the Victoria Hospital energy and waste plant here in London, which is trying to expand the amount of waste that goes into the incinerator. We're currently involved in discussions based on reports that have come out of constant problems over the last few years. I must admit that the Ministry of Environment has not been voicing concern.

The Chair: Thank you very much, Mr Mahon. We appreciate your taking the time to come before the committee today.

ANNE HUTCHINSON

The Chair: Our next presenter is Anne Hutchinson, please. Welcome, Anne. We have your presentation in front of us here.

Ms Anne Hutchinson: Thank you for giving me this opportunity to talk to you. My name is Anne Hutchinson, and I live in Woodstock. I do not represent a group, but I am here as a private citizen. My presentation will focus on the ways Ontario municipalities are being pushed to privatize their water and sewage systems on the false assumption that it will save money. My points will be

illustrated by quotes from people I have talked to in Oxford county.

But first I would like to comment on the Fraser Institute language adopted by the Harris government to try to put a positive spin on some devastating legislation. Bill 26, which removed the requirement that municipalities hold a public referendum on the sale of public utilities, nearly eliminated financial assistance for infrastructure and reduced monitoring and enforcement staff by 40%, is called the Savings and Restructuring Act. Bill 107, which transfers to municipal ownership all water and sewer plants currently under provincial control, is called the Water and Sewage Services Improvement Act. Ernie Hardeman, member of provincial Parliament for Oxford, justifies this dumping of responsibility, saying, "Requiring a referendum wasn't in keeping with local autonomy."

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Another example on a different matter is Bill 84, which would allow municipalities to reduce staffing levels of professional firefighters and increase the time it takes to respond to an emergency. Solicitor General Robert Runciman argues that the bill will "enhance public safety by focusing on fire prevention." These attempts to hide the underlying purposes of the legislation are an insult to the intelligence of the people of Ontario.

What is the underlying purpose? First, the need to save money, which most people agree is an urgent need; second, save the money by privatizing government services, and here there is no agreement. How can private business operate for less than public business when it has to make a profit? Ed Down, the warden of Oxford county, says private business can compete because "labour costs are less." Doug Steele of CAW Local 636 says, "Private operators make a profit through lower maintenance standards and concessions from workers."

Examples of privatization bear this out. An article by Sarah Sexton and Nicholas Hildyard in the Public Service Privatization Research Unit in London, England, January 1996, says: "The economic benefits of private companies taking over public services lie in the assumption that private operators are more efficient managers.... In practice, cutting labour costs makes the main savings." They say that when water and sewage systems were privatized in Britain, 25% of the workers were fired while huge dividends were being paid. I won't go into the private monopolies in Britain, which I'm sure you have already heard about today.

We should not be so quick to dismiss public systems as inefficient and embrace private systems as superior. An example of a public system that works well is the Woodstock Public Utilities Commission. Garry Roth, the general manager, says the PUC is an autonomous system owned by the county and operated by Woodstock. The money collected pays all the costs, and the profits go back into the system instead of paying stockholders. Woodstock has one of the lowest water rates in Ontario. Roth is opposed to privatization and says, "Water systems are, by necessity, a monopoly, but I think what's worse than a public monopoly is a private monopoly, especially when it monopolizes something as essential for life as water."

Al Scott is the general manager of OCWA, Elgin hub, which includes Oxford. Scott says that municipalities will not privatize by selling assets because Bill 26 sets out penalties if they do. If a municipality borrowed money from the province to build the system, it must pay it back if it sells the system. This is another example of trying to fool people with reassuring words. In fact, it is not a penalty but an incentive. It sets the price that the water company will have to pay and leaves the municipality debt-free. The price is cheap because the water company is not required to pay the interest the taxpayers paid on the loan. Looking at it from that point of view, Scott acknowledges the penalty is slight and maybe not enough. He says, "It appears to me that the provincial government is setting it up so it's not the province that will get the blame for it."

Asked how private business can operate for less than public business when it has to make a profit, Scott says: "That's what private contractors are complaining about. They don't like to bid against a government agency. Government doesn't have the same overhead costs or profit margins to meet, so they feel they are being hard done by. They are lobbying the government very hard."

If they are successful in their lobbying, and business certainly has the ear of the Harris government, then OCWA and all the good services it provided for municipalities will be gone. Bill 107 virtually eliminates the role of OCWA.

The local governments in Oxford county have no plans to sell their water and sewage systems, though some do look favourably on privatizing the operation. Down says Oxford county is debt-free and so will have no difficulty handling the downloading, but the costs of the new social service responsibilities being dumped on municipalities could jeopardize this. If budgets get tight, that is when municipalities will look for ways to cut expenses. Some municipalities will be vulnerable. They don't have the money, the resources or the expertise to run the systems they are inheriting from the province, and they can no longer get financial help and expert advice from the province. An offer from a private company will look like an easy solution.

Municipalities are being backed into corners where they have nowhere to turn except to private business, and there are 30 international water companies from Britain, France and the States in Ontario poised to take over. There are also many Canadian companies. True, the new legislation doesn't actually specify that municipalities should privatize, it just enables. Why has the government passed laws enabling privatization if it doesn't intend them to be used? The message is certainly clear to the water companies.

The Ontario Ministry of Environment and Energy has indicated that the province will maintain and enforce rigid water quality standards. However, reducing inspectors by 40% will make that enforcement difficult. Hardeman says: "I'll be the first to admit that government inspection will not be as regular as now. It will be more random." He says that stronger penalties and fines if they get caught will keep operators from breaking the regulations.

So enforcement is now mainly a municipal responsibility. Water and sewage treatment testing and inspection of

the infrastructure require expensive equipment and expertise. Municipalities will need to factor these costs into any decision to privatize. Here again the Fraser Institute intrudes with the mantra that government cannot monitor the systems it operates. Therefore, it follows that if municipalities must enforce, they must privatize.

In conclusion, I would like to ask, if this government is concerned about jobs, why is it promoting policies that reduce jobs and lower wages? If this government is concerned about public safety, why is it jeopardizing safety by reducing inspection? And where is all the money that has been saved? At the end of the day, water rates still have to be paid, either to a local government or to a private company. As a ratepayer, I don't want my money going to stockholders.

Mr Hoy: Thank you for your presentation. We don't have time to discuss your presentation in detail, but towards the end of it you talked about inspection maybe being reduced and put in a more random form, and that higher fines will protect the public. I'm paraphrasing, but that's what is here. How do you feel about that? Do you think that would be adequate to safeguard the system of water supply?

Ms Hutchinson: No, I don't. They'd have to be very high fines, and there's always the chance they won't get caught. I understand there is only a full provincial inspection of the water systems once a year now. They send in reports every couple of months, but to actually come in and monitor is only once a year. If it's less than that, is it every three or four years that they're going to come in and inspect? It's pretty easy to gamble that you won't get caught if it's going to be at random like that.

Mr Hoy: The combination of random inspections and higher fines doesn't necessarily add up to good protection for the public.

Ms Hutchinson: No, I don't think so.

Mr O'Toole: Thank you for your presentation. On page 1 you lead into the whole argument of sort of a conspiracy theory. Do you advocate that there's some kind of conspiracy theory? Is this something serious or are you just kidding?

Ms Hutchinson: I am concerned about it. The choice of words seems to occur over and over.

Mr O'Toole: You mention about six pieces of legislation here, as if there's some kind of agenda that I'm not aware of.

Ms Hutchinson: It's the words "improvement" and "enhancement" and all these things that lull people into thinking: "Oh, I guess they're doing a good job. They're improving things and making it safe."

Mr O'Toole: My question wasn't on that, though. I want to get your reaction to that way of phrasing things.

I'm going to ask a question. You make the point, and it may be a very good point, that "Roth is opposed to privatization and says... 'what's worse than a public monopoly is a private monopoly.'" Which one is worse in your opinion?

Ms Hutchinson: A private monopoly.

Mr O'Toole: Why?

Ms Hutchinson: I think it's more difficult to monitor.

Mr O'Toole: Should the government provide the standards so that there's some kind of measurement

activity? I agree with you that we have to have clean, healthy water. No one here would ever disagree with that. Is that the role of the government, to make sure that the standards are complied with?

Ms Hutchinson: I'll speak personally. You're asking me personally. I have more trust in our government systems and our municipal systems than I have in a private company.

Mr O'Toole: Which level of government? Federal? Provincial?

Ms Hutchinson: We're talking about the municipal level.

Mr O'Toole: So you think it's a good idea to move it down to the municipality where it's really close to the people.

Ms Hutchinson: It always has happened that way anyway, hasn't it? As soon as the debt's been paid, it does go to the municipality. That's always happened. This is no different here.

Mr O'Toole: Yes, 75% of them now own this.

Ms Hutchinson: Yes, and it's only another 25%, but they're coming now before the debt has been paid off, so it could be difficult for some communities to handle.

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Mr Galt: I just wanted to re-emphasize that this bill is about clarifying who owns these plants. You made reference to the Woodstock plant and how well it operates. That's exactly the kind of thing we want with all the plants: to be in municipal ownership. We're putting discouragements in there for privatization. You're expressing some concern about privatization, and certainly we are.

You also express some concern about inspections. The inspections are continuing at the same rate as they did previously. There's been no reduction in the inspections of the water or water treatment or waste water treatment plants in the province. It will continue that way and the province will continue with the tough standards it's had. There will no change in that role.

It will only change in who owns them. It will give the municipalities the opportunity to choose who they will have run them: themselves, OCWA or a private company. But the ownership is quite clear cut, and that's what the bill is about: to give ownership to the municipality.

Ms Hutchinson: I agree, and this is what I've said in here, that the ownership traditionally always has gone back to the municipality. But I believe now, with all the other burdens of money they're going to have for social services and so on, they will be looking at ways to unload and that's going to be one thing they're going to look at. The water company is going to be there making them wonderful offers. While in the past they haven't had to privatize or sell off their utilities, why has the government enabled them to sell these if they don't intend to do it?

It's the same with the parks and so on. They own the parks but there's nothing now that says they can't sell all these assets that the public has built up over the years. I believe, as a public citizen, I own these things and I don't want them sold to a private company.

Mr Galt: But they have to repay the grant and the subsidy —

Ms Hutchinson: I explained in here that that's not a penalty; it's an incentive. The water company simply comes in and says: "Great, here's the money you paid the province. I'll pay you back." They don't have to pay the interest that, as a taxpayer, I've paid for those systems over the years. They just pay the price and it's theirs, and then they're going to put up the water rates to get that money back.

That's what I mean by the language, to say, "It's a penalty and we're discouraging it," when in fact, if anything, it's an incentive.

The Chair: Thank you very much for your time. We appreciate hearing your advice today.

GRASSROOTS WOODSTOCK

The Chair: Our next presenter is Eleanor Hart, from Grassroots Woodstock. Welcome.

Ms Eleanor Hart: Madam Chair, thank you very much. I would like to express my appreciation to the Chair and the committee for allowing this opportunity to speak. The group I am representing is Grassroots Woodstock, a local organization made up of a diverse group of people, all interested in preserving and enhancing a healthy environment for everyone.

This response to Bill 107 came about because we believe, and are concerned, that this bill does nothing to prevent privatization of water and sewage management. In fact, we feel that planned legislation and legislation already passed encourages it.

Our presentation includes five parts.

(1) Privatization: Why? We understand that there are 30 or so corporations, including international conglomerates, poised to take control and manage water and sewage facilities. They are not doing this out of the bigness of their hearts, but because of further profit, which is not always put back into the system but goes to excessive executive salaries, investors and, often, foreign investment.

One merely needs to be reminded of the privatization experience in England and Wales to be sobered by the effects: on the environment, on health, in maintenance problems and in huge rate increases.

We are told by the government that Bill 107 has nothing to do with privatization. Why did Bill 26 first change the Municipal Act so that municipalities no longer have to hold a public referendum on the sale of public utilities?

Bill 107 does not require public ownership of water and sewage works, but merely provides that a municipality repay the grant received from the government. This is a nice little subsidy for corporations in that it is a small price to pay. With municipalities staggering under funding cuts, the lure of no longer financing water and sewage facilities would be difficult to refuse.

Bill 107 does not provide for an independent public regulator and the government has seen fit to cut the budget and staff at MOEE. Please don't expect private industries to regulate themselves.

If multinationals succeed in gaining control of water and sewage works, it is likely the rates for these services will be determined abroad and not by local elected officials.

The government should look closely at why they are allowing so much privatization. Is it to get rid of unions and allow lower wages and allow more of the rich-getting-richer trend? Again, look at England to see the negative effects.

We see this as a choice between private profits and public service. Some 76% of Ontarians favour public ownership.

(2) Environmental impacts: (a) Impacts on conservation: Running pipelines from the Great Lakes system impacts on water levels. An example is York region's proposal. This, added to the threat of water export, means loss of habitat and biodiversity and effects on all shoreline commercial, residential and recreational uses, as well as aboriginal rights. It is imperative to ensure that water diversion of any kind be done in a modest, strictly controlled fashion. Our research has shown that only 1% of the water in the Great Lakes is naturally renewed.

Wetlands provide many absolutely necessary functions: protecting biodiversity, controlling water levels, temperature moderation, groundwater recharge, buffer zones, purifying water, supplying spawning areas, as well as slowly releasing water into the lakes. They also slowly release moisture into the air, which regulates wet and dry spells. This helps provide relief from flooding and costly crop loss due to lack of rain. The 20% of what remains of the original wetlands is disappearing at an alarming rate of 8,000 hectares, or 20,000 acres, each year.

These facts argue that wetland draining by deliberately increasing land available, or by the adverse effects of lowering water levels by too much diversion, must be stopped.

(b) Sewage plant impacts: Waste waters from sewage treatment plants are of additional concern. These facilities are the largest polluters of the Great Lakes. Already there are some inadequate discharge treatment facilities. Privatization would discourage updating costly treatment because it would mean that profits are diverted from shareholders.

(c) Inland water impacts: Inland water bodies are also of serious concern. Many Ontarians have been making efforts to restore rivers and streams and protect headwater areas. Unfortunately, the present weakening of land use planning controls has undermined these and future efforts to restore and protect water and adjacent riparian ecosystems.

Increasing land development and allowing a privatized management system will lead to indiscriminate diversion of water and less safe sewage treatment systems. Private companies will not encourage water conservation because of the profit motive.

"The frog does not drink up the pond in which it lives."

(3) Free trade and water exports: Water is Canada's most valuable element and must remain under our sovereign control. Under NAFTA, water is classified as "goods" to allow this resource to flow across North American borders. Free trade also breaks down boundaries of where profits can be made. Once the tap is turned on, it must be maintained, even through times of drought.

Here, with the Grand Canal system from James Bay to probably the Great Lakes, these plans lack public support

and demand enormous financial resources. Thus, the pressure will be on to use the Great Lakes. The ability of governments to act through the Great Lakes Charter to protect their jurisdiction from the negative impacts of lowering water levels can be challenged under NAFTA. Governments within the charter may now not favour their residents to the disadvantage of people outside their jurisdiction.

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Multinational companies are anxious to buy assets in OCWA and are clearly interested in cornering a North American water market. The government must understand the implications of this. Ontario water users and taxpayers would be helping pay, through fees and taxes, by giving away what should be under sovereign control to profit-driven, foreign-controlled multinationals. Under Bill 107, this activity is entirely unregulated.

If there is a conflict for any reason, whether it is because of too much diversion or impact on fishing and tourism etc, the complaint would be heard by a trade panel and not by an agreement made between elected governments. Thus, Canadians lose their voice if made to suffer the consequences of diversion.

To lose control of our most valuable element is to give away our country and become a resource-supplying colony of the USA. We are already too far down that road, and it makes one weep.

Further conservation of water is not encouraged if it is plentiful, nor are technologies to purify sewage water by biological cleansing processes such as Living Technologies in Vermont.

The implications of water export, other than bottled, are so devastating that privatization of water and sewage works must at all costs be prevented.

(4) Request: The Ontario government should immediately withdraw Bill 107 unless the legislation is substantially amended. The amendments are supplied in the submission to the MOEE regarding Bill 107 by the Canadian Environmental Law Association and Great Lakes United. Grassroots Woodstock supports their recommendations.

Conclusion: Grassroots held a meeting to hear a representative of CELA explain Bill 107 and the implications of privatizing. It was gratifying to see seven members of the city of Woodstock and county councils in attendance. This included four mayors and the county warden, Ed Down. All were sobered, and one mayor said emphatically, "We don't want privatization of water." He also mentioned concerns about free trade. This sums up the feeling of most present.

Let it be understood that we would encourage municipalities to charge fees for water to induce conservation; this would be better than through taxes. But we are absolutely against private companies doing it for profit.

This society must adjust its understanding of the water ecosystems to recognize that water is not a renewable resource. We must change our use and management of water with sustenance in mind, rather than as goods. To do this, we must encourage the government to find routes other than opening doors to privatization. I say kill Bill 107.

The Chair: Thank you very much, Ms Hart. There are just two minutes remaining, so my suggestion would be that we have questions from the NDP caucus. We'll move to the government caucus on the next round.

Mr Laughren: I feel privileged. Thank you, Madam Chair.

Ms Hart, thank you for your presentation. You made a very strong plea for either withdrawing the bill or making substantial amendments to it if the government does proceed. I suspect the government will proceed with the bill. The real test is whether these hearings are a sham or are meaningful. We've heard lots of people tell us what the amendments should be if the government proceeds. If you were to have your choice of what amendments should be brought into the bill, are they close enough to the front of your mind to tell us what they would be?

Ms Hart: I've got a copy at home of the amendments, but I knew I would not have time to list them all. The first amendment would be to amend it to disallow, entirely prohibit, the privatization of water and sewage works.

Mr Laughren: Would you allow it if there was a referendum held in the municipality?

Ms Hart: I don't think it should be up to each municipality to set the standards. I think the provincial government should set the standards in that area.

Mr Laughren: I'll conclude, because I know we're out of time, by urging you to keep an eye on this committee and just see, when the bill is finished, through your local MPP, whether any amendments have been made or accepted by the government. I would encourage you to do that.

The Chair: Thank you very much. We appreciate your taking the time and coming today with your advice.

Our next presenter has not yet arrived, unless I've missed him. Mr Robinson? No.

BOB SEXSMITH

The Chair: Is it possible that Mr Sexsmith is here? There we go. We can move forward. Mr Sexsmith, thank you for coming. We are grateful that you are here early. Welcome.

Mr Bob Sexsmith: My name is Bob Sexsmith. I thank you for the time to appear before the committee. I hope my leaving is as welcoming as my presenting and arriving here.

It is my view that Bill 107 is substituting legislation for privately negotiated contracts known as compliance plans. It allows them to obtain the privilege of not being bound by the law that applies to previous policies related to water and sewer services. With careful study, one can't help but think it is a page from the development industry's continuous opportunity strategy, that this bill is one which dangerously attempts to divide municipalities into competing factions.

When invisible borders have different environmental regulations along with different measures of enforcing those laws, one side will inevitably be subjected to the other's effluent. Each municipality will feverishly compete to lure industry and development into their location.

Under the bill, each municipality has the right to further weaken existing legislation by striking their own agreements, even at the risk of public health and the welfare of neighbouring communities. It puts a system in place in which government authorities have an uncomfortable and unreviewable discretion to set aside regulations and laws, allowing them to substitute legislation with private agreements by having repealed the law requiring a municipal referendum before local services can be fully or partially privatized, which would lead to less accountability for the environment and other public services.

This bill contradicts provincial policy statements to reduce the potential for long-term public cost or risk to Ontario residents. It denies municipalities control of development and does not impede the expansion of an urban area or a rural settlement area, nor will we be able to avoid situations which may require future remediation to address environmental or health and safety concerns.

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While public communal services are the preferred means of servicing and partial services to a new lot of the minimum size are needed to accommodate the residents with an appropriate sewer and water service, Bill 107 has no formal community participation plan.

In consideration of certification criteria for sewage treatment plants, we need to include measures to build local human or institutional capacities. Projects must not create dependence on high levels of resource inputs from outside the community. There must be a post-certification participation plan aimed at maintaining public awareness and accepting the facility during its life cycle.

The bill presents the municipal government the total liability for past, present and future septic approvals as of October 1997. We have already lost the curb program that conservation authorities provided regarding water quality and septic approvals. This raises questions about how inspectors are qualified, by reviewing what is required to investigate complaints about a septic tank. Conservation authorities were required to have a minimum of three years' experience on the job. A three- to five-day workshop, as proposed by new regulation, would not be sufficient training.

It should be noted that the present list of certified haulers and installers is outdated in our area. We have people still on the list who died years ago. Also, there is a significant difference in the qualifications of the persons listed.

We now have 49 approval authorities for septic systems, including all that is entailed. In October 1997 we will have 1,200 to 1,300 cities with approval authorities. In addition to the city's authority, we need to meet the provincial requirements as well. The provincial requirements are included in the policy area and the act, with all the differences in requirements and compliance with regulations. At the present time there is no staff allotted to this in our municipality, and all of this will be done without additional qualified staff at the municipal level and reduced staff at the provincial level.

I have not addressed the manufacturing area of research and development of septic systems. The right to charge user fees after September 1997 will mean a 50%

increase. At present, the costs range from \$56 to \$250. It is expected that fees will be in the \$400 to \$600 range. This potential liability for regulatory nuisances will now become a cost to the municipalities. With the transfer of part VIII of the authority, considerable legal liability will be added to these costs. Given that the environmental appeal hearing cannot award costs, this will increase administration costs. With the average hearing taken three to five days, how will municipalities afford these costs? Even fines do not cover the costs of administration, as the Provincial Offences Act is not adequate, with a maximum fine of \$3,000.

The city of London has seven sewage treatment plants, with few inspectors to control and investigate discharge, ie, the treatment of waste or the tests for dioxins or PAHs, polycyclic aromatic hydrocarbons, and VOCs, volatile organic compounds. Bill 107 presents more questions for the city of London than it addresses. I do not think the municipal tax base can afford Bill 107. The return of the provincial grants back to 1978, before the sale of or from the transferring ownership of sewage works and water supply systems, may not do anything but establish the dollar amount needed to buy what residents of London have paid for already with their taxes.

The province enjoys extremely broad immunity against certain civil actions, while municipal elected officials can now be sued for financial loss by other legislation that makes them accountable for business losses resulting from their decisions. There is a need for a continued provincial role in inspection and approvals, as opposed to the devolving of responsibility to every municipality in London.

I would like to present some questions about the environmental rationale that appears to be motivated by economic terms, not ecological terms.

This issue is contained in the safe drinking water act for Ontario, or rather what is not enacted or entrenched in this essential element called water. Water quality and water use within the province is of particular public interest. The protection of this vital, life-sustaining resource is self-evident. The justification for the protection of human health, water conservation and ensuring public accountability seems to be threatened by the potential privatization under Bill 107.

The government's intention to facilitate privatization of water by reducing water to a simple commodity that should be bought and sold on markets like any other commodity is a denial of reality. The London community has already had to approach utility companies to have regard for economically disadvantaged citizens. Do we now have to negotiate for these citizens to ensure water to their homes for their children, given that the private companies are motivated by the ability to collect their payments?

I would question the province's goal to comply with the North American free trade agreement. It should be recognized by the public that once water is accepted as a commodity, this agreement requires the continued supply south of the border, even if water shortages occur in Canada. In fact, public tenders for privatization must include corporations in the United States when water is deregulated.

In conclusion, what we have with Bill 107 is a sort of "live and let live" arrangement among public officials and companies to accept and approve. An additional problem is that we have a framework for any agreement, a collusion with the affected companies, the ability to block proposed changes promoted by environmental groups, to modify legislation or agreements not aimed at protecting ecological concerns. A case in point is that business and authorities have a clear intention of promoting investment within Bill 107. The result is the weakening of already limited but necessary instruments for the prevention of negative environmental impacts.

Environmental authorities are frequently criticized for a growing tendency to negotiate the application of the law and interpret it in a discretionary manner, ignoring scientific studies that demonstrate the unsuitability of a site or legitimate opposition of the community. The artificial shortage of financial resources for environmental investment continues to shift those costs on to the environment, the health and welfare of the population and the viability of our province.

Thank you for the time. I did include in the written submission five minor recommendations. I don't know whether I have enough time left to read them, Madam Chair.

The Chair: Yes, you do.

Mr Sexsmith: The recommendations are:

1(a) That there be developed a 90-day notice to local residents when sewage treatment plant tenders for privatization are called and that residents are allowed to respond to any concerns; and

(b) That all privatizations of sewage treatment plants have a municipal and public monitoring board for a minimum of five years to ensure public safety and to ensure that proper maintenance is performed.

2(a) That qualifications for inspectors include proper educational background and experience to investigate a complaint and ensure proper environmental installation; and

(b) That haulers and installers be licensed and have the proper qualifications.

3. That the environmental hearings and Provincial Offences Act be amended to reflect the administration costs to the public or the municipality.

4. That the province extend immunity to municipal councillors to the extent that the provincial government and employees of the government have.

5. That in the event of privatization of the water distribution system, no person can be denied this life-sustaining resource.

I thank you for your attention. I apologize for not having sufficient copies for everybody, but my own typewriter doesn't print well.

The Chair: Don't worry about that, Mr Sexsmith. The clerk has indicated that she'll make sure we all have copies of those tomorrow. We'll begin with questioning from the government caucus, please.

1500

Mr Maves: I just have a quick one. Have you ever had occasion to go to your municipal council on any issues and ask for support for certain things?

Mr Sexsmith: Oh, yes.

Mr Maves: Have you been successful? Do you find them responsive?

Mr Sexsmith: Responsive, yes, but not always in agreement.

Mr Maves: Do you think that municipal councils are more accessible, say, than the federal government or the provincial government, for the average person?

Mr Sexsmith: I can deal with the municipal level, but the staff of all three levels I find are much more responsible than the elected officials, because I find that the —

The Chair: Don't take offence.

Mr Sexsmith: Some of them have the experience and the qualifications to advise you of a particular problem that elected officials are not privileged to have. I think when you get into the details of a request or a concern, in particular involving the environment, sometimes there isn't time in a presentation to elected officials to get into the scientific justification for your concerns.

Mr Maves: This bill doesn't privatize anything. It gives title to the municipalities. If you presented those five recommendations to the municipalities, once they had title, do you think they'd be receptive to them?

Mr Sexsmith: If they follow London's Vision '96 process and the official plan that was put in and is now being appealed, I would say yes, because in our official plan we had an environmental plan component within that and it was appealed all over the place after we finally presented it as a municipality. We're still waiting for the results on that, because when a developer approaches an area for development, the city has been very careful to include in our official plan an opportunity for citizens to have input into that plan before it gets approved.

Mr Maves: That's got to be comforting for you then.

Mr Sexsmith: It's comforting in the fact that I have the opportunity to make a presentation, and it's too often that I have found that I have been proven right, after the fact, with what I said. We have two separate examples where subdivisions have been approved with a septic system rather than being tied into the municipal services. They have now been forced to turn both of those subdivisions, and they're only small, into municipal sewage systems. That's in south London.

The other incident, where we have groundwater — they were about to put in some sewers under a street extension and I told them before they went there that there was a high groundwater level there. They ended up putting in two eight-inch pumps 24 hours a day for about two weeks so they could put in a sewer system.

Mr Maves: I thought you said the staff was good.

Mr Sexsmith: The staff is good and they said that, but the developer and the private contractor who was putting it in wouldn't listen. The staff had advised them, "Yes, the water table is high and you should be aware of that." Then the developer came back and said: "Hey, wait a minute. I've got to have special permission so I can pump this water out of here so I can put in the sewer line."

With private companies, they have a tendency to have schedules, deadlines and a profit to make. With the municipal staff, they tend to take more time and they will consider your requests and they will try to satisfy them as much as possible. Now, at times it's not physically

possible. Hindsight is always wonderful; foresight is a little bit more difficult to prove.

Yes, I like the staff of most levels of government. I find that they are being cut back. They're probably all working 40 to somewhere in the area of 85 hours a week and they're being told that they ain't doing enough. I'm saying it's about time we stopped doing that and started giving them the supports that are necessary.

The Chair: Thank you, Mr Sexsmith, for coming before us this afternoon. We appreciate your advice.

GERRY RUPKE

The Chair: Our next presenter is Mr Rupke. Welcome and good afternoon.

Mr Gerry Rupke: Thank you very much for this opportunity. My name is Gerry Rupke. You don't have a handout in front of you because I've just recently, as of this weekend, come back from Africa and I'm suffering the consequences of poor water and sewage infrastructure, so you'll have to bear with me.

Mr Maves: Is that private or public?

Mr Rupke: They were very public.

I was sent because I have very little hair. That's so you can see I don't have any horns. I'm one of these privatizers. People have said a lot of things about privatizers, and I'd like to give you a little of my background to let you know where I'm coming from and what perspective I'm speaking from.

I'm a professional engineer with a master's degree in environmental health engineering. I graduated back in the mid-1960s. I've dedicated my life and my career to the water environment in Ontario. I started with the Ontario Water Resources Commission, worked for the Ministry of the Environment, worked for York region as an operations engineer and was responsible for all the water and sewage facilities in that area for a number of years, and then went into private enterprise providing contract operation services to the private sector, primarily to industry, doing some municipal work. Quite recently, within the last three years, I sold my company to one of those big multinational conglomerates. I hear there are 30 of them. I don't know where they are. I see about five or six real contenders in the field of supplying contract operations and privatization of water and sewage facilities to municipalities in Ontario.

I come with that background, with that baggage, so I have a unique perspective and I want to confess that to you when I start talking to you.

I have had an opportunity to review Bill 107 and, from my perspective, I come with two comments. One relates to, what is the purpose or the intent of government in the whole area of water and sewage infrastructure?

It was my understanding that the government was interested in promoting the utilization of private capital to provide public infrastructure. I think in light of the financial restraints that are being placed on municipalities, the sourcing of funds, the grants being cut off, that the money's going to have to come from somewhere to provide water and sewage infrastructure expansion over the next number of decades. If it is in fact the government's intention to promote private money to be utilized

in that manner, Bill 107, specifically as it relates to section 56.2, makes that somewhat difficult. It's obvious that if the private sector is going to put money into infrastructure, it's going to want some recourse to recoup that money should the municipality fail to repay the moneys that are owing against it. Private enterprise does not put money in and not expect a return on capital or a return of capital.

The requirement to repay any grants that have been provided to the municipality over the years is a disincentive to bringing private capital into the infrastructure of the municipality. You can obviously see that if you're comparing not having to pay back the grants with having to pay back, say, \$10 million or \$15 million, there's a big hill to overcome before it becomes cost-effective for private people to bring in private capital. That's the first point I want to make.

You'll find that I'm not completely following my outline. There is a bit of an outline coming out.

The second issue is the presence of OCWA in a competitive marketplace. We've heard a number of people talk about the Ontario Clean Water Agency and the excellent job it has done. I was part of that excellent job for quite a number of years. I was here when there were no other alternatives in the marketplace, other than government becoming involved in a very meaningful way in the operation of water and sewage facilities. I was at the front of developing new technologies. That was my job with the government.

So I am well aware that yes, there was a role for the Ontario Water Resources Commission and ultimately for OCWA at one time or the role that OCWA now plays. However, I'm also very aware that in today's marketplace there are other ways for that service to be provided. I've seen both sides. I know the private sector can in fact provide better service at a lower dollar.

1510

When I was with York region, I was convinced that we could run the most cost-effective and best-run water and sewage facilities there would be in the province. I found myself so overburdened with paperwork and minutia that I didn't even have time to see how well the facilities were running.

Some earlier speakers spoke of how the municipal people are overloaded these days, and it's going to stay that way. Private enterprise has an ongoing profit motivation, yes, but that motivation is for efficiency and excellence, because it's through efficiency and excellence that you arrive at the minimum cost of operation.

Why is OCWA still in the marketplace? It's no longer needed. It's a white elephant. It's time that government in a meaningful and systematic way rolled out some plan to eliminate OCWA over time and allow the competitive forces in the marketplace to provide excellent service to the municipalities. I'd be happy to answer any of your questions.

Mr Agostino: I have a couple questions. Do you believe the private sector, upon assuming ownership of the facilities, should have the right and the power to set rates?

Mr Rupke: No, I do not. That should be the purview of the municipality.

Mr Agostino: How would you balance, then, the fact that as a corporation responsible to shareholders there must be a profit made or some heads will roll, obviously, in any operation they take over? If you have a municipality that feels its taxpayers cannot afford any type of increase in water rates or sewer rates based on that particular municipality, how would you offset that, from your point of view, from the operation to ensure that you do what you have to do as a private corporation — that is, make a profit — without affecting water rates? Where would that difference come from?

Mr Rupke: The competitive process of bidding out the job would ensure that the municipality gets the lowest possible price for the service it requires. How the municipality raises that money — I mean, if a municipality takes out a contract or proposes a contract to the private sector and they find they don't like the prices, they can do it themselves if they can do it cheaper. But if they find that the private enterprise can do it cheaper, then they should go with private enterprise. You're asking where they're going to get the money. The same place they'd get it if they did it themselves.

Mr Agostino: I'm trying to distinguish the difference between a private company coming in and operating a facility — and there's plenty of evidence that companies have done that and that it went well and better than municipal government. However, the control is still there. I am talking about what I see down the line on this, and that is a private company coming in and buying the whole infrastructure, as could happen, because you can dangle a great deal of money in front of municipal governments in cash-strapped times, saying, "Here's a couple hundred million," or whatever the worth of that facility is, "and we will take it over."

I presume that a private company that comes in and spends that kind of money on the infrastructure of a water and sewer works would want the ability to set rates in order to be able to meet its profit line. Are you suggesting that private companies would be willing to give up that right to set the rates but at the same time pay the type of money necessary to municipalities to own the infrastructure?

Mr Rupke: From our view, the municipalities have an equity in the asset. We would be willing to provide capital money, and we would want ownership of the asset until the money was returned. Now, ownership can be a 20-year term, and at that time the asset goes back to the municipality. Basically, you're amortizing a mortgage. They're taking the asset they have and they're mortgaging it, and they pay back the mortgage. We have never seen a privatization that has been different than that, quite candidly, in North America.

Mr Agostino: In your comments, you said you wanted section 56.2 removed, which would be the one protection that the government members are arguing would be there for municipal taxpayers, and that is the fact that any money since 1978 would have to be paid back. You were arguing to remove that. So what you are suggesting is that you want to take over the assets but not pay back the investment the taxpayers have put in.

Mr Rupke: We'll be the banker that provides the mortgage for the asset so that they can realize some

dollars out of the equity they have in the asset today, if they choose to do so. I'm not proposing that we do that. I am saying that if it is the government's position that they want to attract private money to provide municipal infrastructure, that clause is going to be a detriment to doing that, and you should be aware of that. We'll contract to operate facilities or we'll remortgage them.

Mr Laughren: I am puzzled by your comments on OCWA. I am obviously confused here, and maybe you can help me out. I thought OCWA actually made a profit. Hasn't OCWA made a profit the last two years?

Mr Rupke: OCWA lost \$8.5 million on operations last year. They made some 20-million-odd dollars on the financial portfolio the government gave them, and they get an interest rate spread. Overall, yes, they made a profit, but on the component that we primarily look at, which is the operating cost, they lost around \$8.5 million.

Mr Laughren: They're your competitor, right?

Mr Rupke: Yes.

Mr Laughren: You don't like them.

Mr John R. Baird (Nepean): That's unfair to say you don't like your competition.

Mr Laughren: You don't show it any more than he shows —

Mr Rupke: Many of them are friends of mine. How can I say I don't like them? They've been in the industry as long as I have, and we're a small industry.

Mr Laughren: Okay, help me out on the repayment of loans. The government has provided grants to municipalities for their sewer and water systems over the years. That's hard-earned taxpayers' money that's gone to those municipalities. Now, why should the private sector be able to come in and scoop up those assets that have been subsidized by the long-suffering taxpayer?

Mr Rupke: I think we're talking about remortgaging; I don't think we're talking about taking ownership.

Mr Laughren: No, I am. If a municipality privatizes a sewer and water system, the bill says they must repay grants going back to 1978 that had been given to them by the taxpayers, right?

Mr Rupke: Yes.

Mr Laughren: Now the municipalities, if they repay those grants, surely to goodness they're not stupid. They're going to build that into the price they would demand from the private sector, or else why would they sell to the private sector?

Mr Rupke: But that's going to artificially increase their cost of service, is it not?

Mr Laughren: But you're leaving the poor taxpayer out of this. Why should the taxpayer not get back the money?

Mr Rupke: When will the taxpayer get the money back if they don't privatize the facility?

Mr Laughren: They don't need to, at that point. They don't need to. They already own it. We're talking about selling it to the private sector.

Mr Rupke: And 20 years down the road they'll own it again.

Mr Laughren: Here you've got a situation — boy, you've got a beautiful plan here, this is wonderful; I want to join your organization — where you say: "The taxpayers have put money into this. Now give it to me."

Now, that is outrageous. How in the world would I as a taxpayer ever go along with that?

Mr Rupke: I'm saying that if you want me to put capital into it, I need some protection of my capital.

Mr Laughren: So does the taxpayer. The taxpayer has put that money in there. Why in the world should you not have to compensate the taxpayer for what they've already paid for?

Mr Rupke: There's only one condition under which the provincial government asks for that money back.

Mr Laughren: If they privatize it.

Mr Rupke: If they privatize it.

Mr Laughren: Right, if they sell it to a profit-making organization. But the municipality is not a profit-making organization, right?

Mr Rupke: Yes.

Mr Laughren: That's the big difference. If they're going to privatize, for heaven's sake, they've got to get what they can out of it.

Mr Rupke: Mr Laughren, I am not proposing that you in fact sell the facility. I'm saying, if the provincial government wants to attract private capital to provide public utilities, then this clause is making it difficult to do that, because you treat that situation differently than any other situation that they have to compare the costs to. You are then saying, on one hand, "Yes, we'd like to attract the capital," but you're passing a bill that makes it difficult. If that is in fact the government's position, that they want to attract the capital, they should best know that this clause causes a problem.

The Chair: Excuse me, I must interrupt. I'm sorry.

Mr Galt: Thank you for your presentation, and thank you ever so kindly for explaining to the previous Treasurer of Ontario that OCWA and its operation lost \$8.5 million. I very much appreciated that explanation to him.

Mr Laughren: He didn't say that.

Mr Galt: Oh, yes, he explained that, very much so.

What I wanted to run over very quickly is that the intent of the government is that the plants should be municipally owned and give the municipalities a choice in how they're operated, so there's some competition brought in, whether it be the municipality that runs them, whether it be OCWA that runs them or whether it be a private company that runs them. That's the direction we're headed.

You mentioned having to give back those grants as a disincentive. We've been hearing from several groups that it would be an incentive. I'm awfully glad you explained that also, because it has been adding to confusion.

Mr Laughren: I have a point of privilege.

The Chair: Okay. May I just thank the presenter? Thank you, Mr Rupke, for taking the time to come this afternoon. The committee members appreciate it.

Mr Laughren: I'm getting a little tired of the parliamentary assistant's distortions here.

The Chair: Hang on. That's not a point of order.

Mr Laughren: Let me finish. In 1996 OCWA —

The Chair: No, that's not a point of order. Sorry, it's not a point of order.

Mr Laughren: — it's not a loss. That is a point of privilege.

Interjections.

The Chair: Excuse me. Order, please. We're moving on. We're going to take a short recess. Our presenter Mr Robinson is not present at the moment, unless he has just come in the door — no — in which case we're going to take a recess. I believe it's going to be a 30-minute recess.

For those who are interested, we have passes available for anyone who wants to go to the trade show upstairs. You can come and pick these up. We'll meet back here at five to 4, please.

The committee recessed from 1522 to 1556.

STATEMENT BY THE MINISTER AND RESPONSES

The Chair: We welcome this afternoon Minister Sterling, the Minister of Environment and Energy, who will make a presentation to us on the Municipal Water and Sewage Transfer Act, Bill 107. Welcome, Minister.

Hon Norman W. Sterling (Minister of Environment and Energy): I'm glad to see so many of my colleagues, after last week, bright and cheery here.

Mr Ouellette: Thanks, Norm. You too.

Hon Mr Sterling: I can actually see their eyes.

It's a pleasure for me to be here because I believe Bill 107 is a tremendous improvement in the quality of water and sewer services for the people of Ontario. You may have noticed on my lapel I have a pin with a trillium and a shovel on it. I was this afternoon made a member of the select society of sanitary sludge shovellers upstairs with regard to the Water Environment Association of Ontario, which is meeting upstairs, and had an opportunity to speak to them earlier this afternoon.

I know members of this committee and everyone else who has taken the time to join us today share in my commitment to ensuring that Ontarians continue to enjoy first-rate water and sewage services. There will of course be differences of opinion about how to meet this shared goal, but I believe we can work together to improve the delivery of water and sewage services while giving better value for the tax dollar. This is the intention of Bill 107.

The bill, as you will recall, followed the recommendations made in December 1996 by David Crombie's Who Does What panel to clarify provincial and municipal responsibilities. Bill 107 will improve water and sewage services in this province by clarifying the role of government and increasing its accountability. The bill proposes to (1) give Ontario municipalities full title to provincially owned water and sewage treatment plants serving their communities, and (2) transfer to municipalities responsibility for the septic system program, including inspections and approvals.

Municipalities already have shown they can deliver high-quality water and sewage treatment services to their communities. After all, they now own 75% of all Ontario's treatment facilities. With the passage of Bill 107, they would be the sole level of government holding title to water and sewage plants in Ontario. In other words, the other 25% will be added to the 75%.

In addition to being able to deliver the services, municipalities have also shown the desire to do so. Many local governments have told us they want us to move in

this direction. In fact, almost 60 municipalities made this request even before we introduced Bill 107. They wanted title to their own plants. We are responding to the wishes of municipalities like St Mary's and Waterloo region, to give you just two examples.

Right now the province is in an ambiguous position, being the regulator, the owner, the operator and sometimes the funder of water and sewage services. Bill 107 would end this complex situation. Municipalities need the kind of flexibility provided by Bill 107. Our proposed legislation would allow municipalities to deliver water and sewage services, as most do now, and to choose the operator that best suits their needs. There will be advantages for the taxpayer as well. Fewer levels of government administration means increased efficiency and decreased cost. It would make our water and sewage systems operate more efficiently so that safe, drinkable water can continue to be provided well into the future.

Bill 107 will help the provincial government focus on its real job, my real job, and that is setting and enforcing tough performance standards for water and sewage treatment plants and ensuring that those standards are met.

Bill 107 would also encourage continued public control of water and sewage works, thereby protecting the taxpayer's best interests and investment. Municipalities would be prevented from selling all or part of their waterworks to the private sector until they have repaid any and all provincial capital grants received since 1978.

I might add, that not only applies to the 25% which titles are being transferred, it applies to all sewage and water treatment plants in the province of Ontario — 100%.

There is no such provision existing in Ontario today. Therefore, municipalities have greater ability today to sell water and sewage infrastructure than they would once Bill 107 is passed. Some water and sewage works provide service to more than one municipality; many are jointly responsible for the debts and the operations of these particular area plants.

These works will be transferred to the serviced municipalities through a joint management structure which is referred to in the bill.

Soon after the bill is promulgated, area planning municipalities would be given proposed terms for management of their joint water and sewage facilities. They can work within these model frameworks. Of course, we would welcome alternative proposals from them.

Bill 107 also calls for the transfer of responsibility to municipalities for the septic system program, including inspections and approvals. The Ministry of Municipal Affairs and Housing would administer the program in unorganized areas of the province. We originally proposed to make this change effective on October 1, 1997. However, we have since heard municipalities express concerns about this date. We listened to those concerns and will be proposing that these provisions take effect on a date no earlier than January 1, 1998. The transfer date will be proclaimed at a later date.

We do not intend to rush our changes through. We want to act quickly, but we also will do what makes more sense and of course ensure that the safety of our drinking

water and our sewage facilities work before we in fact embark on this system.

When the septic system provisions of 107 are in place, municipalities could include new or expanded septic systems within a one-stop approval service for the building industry. We intend to ensure that public health and environment are protected by tough rules for septic system installation and operation. Those working in this area will have to be competent enough to meet the standards that we set.

People must have confidence in the abilities of inspectors, confidence that their advice can be relied upon. We are using the transition period leading up to the transfer of responsibility for training to ensure that inspectors meet the highest standards of professionalism.

I might add that there is no uniform standard for inspectors across this province now for people who are involved in inspecting these particular installations.

We are also going to be requiring the training and certification of installers. There is presently no training or no certification required for anybody installing a septic system. Homeowners will benefit from greater protection by the enhanced training and certification requirements. Greater professionalism will mean better value for the dollar.

I'd like to read a quote from Aubrey LeBlanc, the CEO responsible for the Ontario New Home Warranty Program. I might add he's the former Minister of Consumer and Commercial Relations under which the home warranty program fell. Of the payouts with regard to defaults or faults under the home warranty program, the payout of that particular insurance scheme, about 10% to 15% were for septic systems. So it is a very big part of their overall program, the failures, with regard to the overall program.

Mr LeBlanc said, in terms of the new program, "The new requirement for training and certification of installers and inspectors will provide greater protection for both the environment and the homeowner." This is a person who has hands-on knowledge with regard to a huge number of failures which have occurred under the old system with regard to septic system installation and inspection in the province of Ontario. "This will mean that residents of all municipalities across the province will receive a seamless level of service delivery. This has not been the case in the past."

Just as we will continue to set and enforce high standards for water and sewage treatment plants, we will also continue to set tough rules for the septic system installation and operation. Restructuring these services would improve their delivery, thereby giving good value to the taxpayer; the best possible service with the optimum efficiency and least cost. Higher-quality work would also of course mean better protection for the environment. This remains the most important goal of all of Bill 107.

Confused ownership and fragmented administration are hindering the delivery of water and sewage services in Ontario. Our intention with Bill 107 is to clarify and untangle the roles of municipal and provincial governments in this area. Bill 107 will better protect the environment by clarifying the roles and accountability. It will

also help save tax dollars by eliminating administrative overlap. It will not compromise the quality of services themselves.

Municipalities have clearly shown that they are able and responsible in delivering quality water and sewage services. The government is committed to ensuring that Ontario's high standards of environmental protection are maintained and, wherever possible, improved upon, which is, I believe, what Bill 107 is all about. Thank you.

The Chair: It has been agreed that each of the opposition and the third party will have 10 minutes to either respond or to question. We begin with the official opposition.

Mr Agostino: I'm pleased to respond to the statement made by the minister today. I think we have to look at this legislation in the context of everything that has happened in the past year and a half or two years. If you look at the bill in isolation, most of it seems like an innocent piece of legislation that simply transfers 25% of water services to the municipalities and allows them control, as they do the other 75%. So in isolation, as this government would like to spin this bill, to a great degree it has some impact, but not that significant.

What has to be looked at, though, is the history that has led to this bill being put in place. It started with Bill 26. I find it ironic that the great believers in referendums — the Common Sense Revolution kept talking about going to the public with everything: referendums on tax increases, referendums on everything except Metro Toronto amalgamation — go out of their way, under Bill 26, to remove the one protection that the public had in regard to the selling of assets.

Very clearly with Bill 26, which was not something the NDP or the Liberals eliminated, your government clearly removed that provision. You took away that one tool that local taxpayers had directly. The reason that provision was there was because previous governments, including Tory governments before this group, had realized that water services were essential. It was not simply another asset for governments to play with and fit into the fiscal agenda of the day. You took that away. So first of all, you took that provision.

You then followed with the most massive dumping in the history of this province to local taxpayers. You then put municipalities in a position that most municipalities across Ontario have never ever been in the history of this province. You took the right of municipal electors to vote directly on the issue of selling of services, you then dumped upon the municipalities hundreds of millions, if not billions, of additional costs as a result of your dumping legislation, and then you bring in this bill.

This bill would have been a great opportunity if this government — and I've heard the parliamentary assistant say it. The minister himself says: "I don't think any municipality would be foolish enough to privatize because I don't think that's where the general public are in terms of those kinds of assets." I agree with the minister in that comment.

There's a very simple solution to this problem. Most of the people who spoke today, and I presume tomorrow and the next day in Toronto, are deeply concerned about the possibility, due to the things that I've outlined, of municipi-

palities in desperate situations turning to selling the biggest asset and probably the most profitable asset to the private sector, and that would be water and sewer services.

The government can very clearly and simply assure the public and assure the opposition parties that this will not happen. You can do that by simply bringing in an amendment or amending this legislation that would prohibit municipalities from selling the assets. It's not rocket science.

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I want to distinguish clearly, as I did earlier, between the operation of a facility and the selling of a facility. I believe there is a role for the private sector, with certain conditions being met, to operate a facility. If those conditions include ensuring that contracts are protected, that successor rights are there for the workers and that the agreements that have been in place continue to be maintained, I think under those circumstances, the running of a facility can work.

That is substantially different than selling the whole package to the private sector. Frankly, any company that's going to invest that kind of money is also going to expect to have the main power to make a profit, that is, the ability to set the rates. So you have a situation where if the profits don't quite meet the expectations of the boys on Bay Street or the boys on Wall Street, as the corporate shareholders who will run these major corporations, then there's only one tool: raising water and sewer rates. We've seen that experience very clearly in Britain. We have seen the total disaster there has been in Britain as a result of that.

You have one provision in here that you believe will discourage this, and that is the fact that the municipality will have to repay the provincial government the money in infrastructure since 1978 in relation to this. That provision sounds great on the surface. The reality is that the type of money that can be made in this is a drop in the bucket to the private corporations that would want to come in and would be more than willing to pay back to the government that amount of money on behalf of the municipality. It is simply a token smokescreen effort to try to make it look like there's some protection.

You really do have the power, and I urge this committee, I urge this minister, to take that power that you have and simply bring in this one change to the legislation that would in many ways deal with the concerns I would say of 90% of the presenters today, and that is to make that one legislative change. If your interest is the protection of public service, and that is the service of providing water, if your interest is not a corporate interest, I would urge you to do that.

In the few minutes left, I'd like to ask the minister a couple of questions if I can. The first question is: I agree with the concerns that you outlined with regard to the selling of the assets. If you have those very legitimate concerns and members of your government do as well, why would you not bring in legislation to ensure that it cannot happen and that the municipalities cannot sell the assets to the private sector?

Hon Mr Sterling: Let me just clarify one point you made, Mr Agostino, and that was that prior to Bill 26, a

referendum was required to sell any assets. That only applied to PUCs. Most assets in this province, the majority of the water plants, are not owned by PUCs but are owned directly by the municipality, and all sewage plants are owned by municipalities. So municipalities at the present time are free to do with those as they choose. Bill 26 only affected a minor part of a piece of the pie with regard to referenda.

I guess I believe that the people who paid for it, collected taxes for it, have the ultimate control over the asset. I believe in the autonomy of municipal governments. I don't understand how the province could say to municipalities, "You are responsible for raising the money for building the Green's Creek sewage plant in Ottawa-Carleton," yet the province is coming in and telling you what you can or cannot do with that asset. With regard to even 25% of the assets which we are devolving, what we have is really nominal ownership of these particular plants. The people in those areas have already paid for those plants in terms of the charges they have had levied upon them from time to time. In their charges they not only pay for the operating but they also pay a portion for the capital which was expended on those plants.

My belief is that those who pay should have the ultimate control of the asset. None, or very few to my knowledge, have taken that choice. They are responsible to an electorate which paid taxes to them so I think the decision is best left in their hands. I have no fears that there is going to be any wholesale move to privatize sewage and water plants or pipes in this province. I just don't think the public will support municipal politicians who make that proposition.

Mr Agostino: Just to follow up, I think there are many circumstances and thousands and thousands of pieces of legislation where the provincial government tells municipalities certain conditions they must meet — for welfare rates, programs that are mandatory. That's across the board. In every ministry there are tons of programs and regulatory requirements for municipalities to meet. That is part of the responsibility of the provincial government, which funds a great deal of these programs. That's a role we play at Queen's Park. It's ludicrous to suggest that we don't think we should be telling municipalities, particularly in such a sensitive area. I think government has a responsibility to protect the public and to protect public interest, and this is clearly one area of public interest.

We seem to have unanimous consent around this room that it would be a bad idea for municipalities to sell the assets to a private company. If we deeply believe that, and are not beholden to the interests of the private sector, then frankly we would move to do that.

While we're on this scenario, just briefly, this government's legislation has done absolutely nothing to avoid that. You have a situation where, if a municipality chooses to, they could tender out the assets of water and sewer services. They then would pick a company that, as part of the process, could pay the province back the infrastructure cost since 1978, and that company would then have full control.

There's nothing in here that would give municipalities the power to retain control of the rates, and that com-

pany, when they walk in, take over the operation, would have full control of setting the rates for water and sewer services in a municipality. Those rates would be based upon the bottom line and not public service. I think it's a very dangerous scenario that we're exposing them to.

We must learn from the experiences of other communities. I would again urge this government and this minister to make that one change that would eliminate this fear and simply prohibit municipalities from doing that. Anything short of that would be irresponsible and leave one of the most essential services that government provides in the hands of profit rather than the best interests of the citizens. That would be wrong.

Mr Laughren: I must say I'm very impressed with Mr Agostino's presentation and his questions. I won't repeat them because I think it was very well done. I have a couple of questions for the minister and, depending on the answers, I may not have any comments to make.

Mr Sterling, do you care if the water and sewer systems are privatized by the municipalities?

1620

Hon Mr Sterling: Do I care? If they are privatized by the municipalities then the government would have to take another step, and that would be introduce a method of regulating charges, as we do with natural gas at the present time. Once you're into a monopoly kind of situation then you have to move to a regulatory regime. There hasn't been any privatization in the province to speak of — there may be some minor services provided and some private systems in relatively small communities — but if that happened, then you would have to move to the next step and have a regulatory regime that would be there.

I just don't think it's going to happen in this province. The sewage and water systems in this province are in very good shape. Most of the need to do that kind of thing, as was the case in Britain, as you point out, was that their systems were terribly deficient and there was a huge need for an injection of capital into their systems. That government went to a direct privatization by region and it has turned out to be somewhat unsuccessful in terms of what they've done. I don't think any municipal politician would choose to do that if they wanted to get elected again. It doesn't make sense in Ontario.

I also believe, Floyd, in terms of the basic soundness of most municipal governments that are involved in this kind of decision: You're principally talking about larger centres where they have a fair degree of sophistication in terms of the decisions they're making, so I don't think the worry's that great. I think it's autonomy which can be handled and I don't think they're going to make the wrong decision, from my point of view.

Mr Laughren: I didn't put the question in terms of you being disinterested. It was more, do you have a concern? Does it bother you one way or the other if a municipality does take advantage of this and sell off a system?

Hon Mr Sterling: Any kind of privatization which I have seen within Canada of any kind of municipal government asset or provincial asset — your government sold our GO trains.

Mr Laughren: We didn't sell them; it's called a lease-back. It's using private capital.

Hon Mr Sterling: That's using private capital and using the tax system in order to make a gain because of the fast write-off of these particular assets. That's what happens. That is what you would call privatization, as it has existed in Ontario and Canada at the present time.

It depends on the control of the asset ultimately, in my view. I would not like to see any municipality give up ultimate control of, particularly, the pipes in the ground and the easements going to and from those particular plants. I have — maybe I'm from the old school — concerns over those things in the long run, because I believe those easements, those rights, those pipes, should be there for the future of all our people.

I may have less concern about a competitive situation. I'm not so much concerned about a situation which is a competitive situation as a private situation. In other words, if a municipality said, "We'll buy water from you," from such-and-such, but retain the right to build their own plant, then I have less concern about a competitive situation than I do a monopoly situation.

Mr Laughren: Perhaps your answer explains why you're requiring municipalities to pay back grants if they do privatize.

Hon Mr Sterling: I think that's only a degree of fairness for those who have paid the full shot for their system as well. We have, through your government and the previous governments over the last 20 years, been very generous with some municipalities, paying 85%, perhaps more, of the capital cost. It seemed to me that there might be a temptation for those people to cash in on not only the 15% that they put into the mix but the 85% which we, the provincial government, bellied up. That was a request by myself to include that in the legislation to prevent that kind of transaction from going on.

Mr Laughren: I appreciate that. I might have added some interest on to that number, but nevertheless that's — we could debate that.

The province — correct me if I'm wrong here — does not give OCWA any operating subsidy, right?

Hon Mr Sterling: They didn't do it this year, but when your government was in place they effectively subsidized it to the tune of I believe about \$7 million to \$8 million a year by giving them the loan portfolio on which they earned interest. Therefore, they used that interest to say, "We balanced the books." We said to them when we came to government: "Uh-uh, you no longer have the interest off that loan portfolio. You must now operate on a break-even basis."

Mr Laughren: Do you know if in 1996 OCWA earned a profit, with or without the subsidy?

Hon Mr Sterling: I believe they're operating at a break-even basis now. They have contracted their operation and therefore are much more business-oriented in terms of what they're doing. I'm very proud of what they've done in the last year.

Mr Laughren: Because there have been some comments by competitors of OCWA that they're competing with a subsidized operation. In 1996 OCWA, without the subsidy, earned a \$2.9-million operating profit. I know

you know that, but I want you to pass that on to your parliamentary assistant, who doesn't seem to.

I would ask another question as well. It has to do with changing the date on which the facilities will be transferred to municipalities. I appreciate your comments on changing that date to not before January 1, 1998, I believe you said, which I think makes eminent good sense if there's going to be some municipal restructuring going on by that time. I think that is indeed the earliest date you would want to do that. I don't know; I think this is up to the municipalities really when they can handle that kind of transfer, not for me to take a position on it.

It may be, if the municipal restructuring in some cases takes place by that point, that they'll want a little bit of breathing room as well before they just absorb that. You might want to think, not for any other reasons, but just simply for the interest of municipalities to handle that kind of absorption, before you lock in January 1, 1998.

Hon Mr Sterling: I don't think there's going to be any lock-in date. The legislation points out that I have a notification date and I give them a standard kind of arrangement they could make between themselves. I'm talking principally about the area schemes. They have a six-month period to come back and say to me, "We have an alternative scheme, and there's agreement or substantial agreement with regard to the alternative one." I have to wait three months and then I can say, "It's this or that."

I think it's going to be different for different areas because there are going to be differing degrees of ability to come up with — I want to get a solution that comes primarily from them and I don't want to impose one upon them, so I think it will differ from area to area. There is also a huge amount of work in terms of turning these assets over to the municipalities, because there's a great deal of legal documentation required, because they include easements and description of easements and all the rest of it. Fortunately, there's going to be a lot of legal work.

Mr Laughren: Just to sum up — and I appreciate those responses — I remain opposed to Bill 107 because it does allow for the privatization of the systems and I really do fear that the downloading that's going on — this is not political rhetoric when people talk of the downloading. It's all there. I can give you dollar for dollar what's happening in my own municipality. Whether you like it or not, whether you'd feel comfortable with it or not, they're going to feel the squeeze to such an extent that they'll be desperately looking for every dollar they can find, and if that includes the sale of their sewer and water services, so be it. They'll feel that they will have basically no choice, so I am opposed to Bill 107 largely for that particular reason.

The Chair: Minister, on behalf of all the members of the committee, did you have a couple of things you wanted to sum up with?

Hon Mr Sterling: I know you're anxious to get in the bus and on the way home. I may just add that I believe some of the other principles I'm concerned about with regard to the usage of water will, by the untangling of the responsibility with regard to water and sewer services, encourage some of the things that we've been trying to

bring forward for a long period of time. There's conservation of water. I believe that is done through a full-pay system; in other words, it's not highly subsidized through one hand or the other.

Therefore, I think that will become more of a reality under this system when we have clearly defined the role of municipalities to take care of their own water. I hope it becomes a more precious commodity in Ontario, as we are terrible abusers of the use of water in our province.

Perhaps that's because we're graced with such an abundant supply. I believe these moves will lead to much more stewardship with regard to our fresh water in Ontario.

The Chair: Thank you very much for taking the time to come this afternoon. We appreciate it.

We shall reconvene tomorrow at 9 o'clock at Queen's Park, in room 228.

The committee adjourned at 1630.

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**Standing committee on
resources development**

**Comité permanent du
développement des ressources**

**Water and Sewage Services
Improvement Act, 1997**

**Loi de 1997 sur l'amélioration
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
RESOURCES DEVELOPMENT

Tuesday 15 April 1997

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DU
DÉVELOPPEMENT DES RESSOURCES

Mardi 15 avril 1997

*The committee met at 0904 in room 228.*WATER AND SEWAGE SERVICES
IMPROVEMENT ACT, 1997LOI DE 1997 SUR L'AMÉLIORATION
DES SERVICES D'EAU ET D'ÉGOUT

Consideration of Bill 107, An Act to enact the Municipal Water and Sewage Transfer Act, 1997 and to amend other acts with respect to water and sewage / Projet de loi 107, Loi visant à édicter la Loi de 1997 sur le transfert des installations d'eau et d'égout aux municipalités et modifiant d'autres lois en ce qui a trait à l'eau et aux eaux d'égout.

NEIL FREEMAN

The Chair (Mrs Brenda Elliott): Good morning, everyone. I call to order the second day of hearings into Bill 107, An Act to enact the Municipal Water and Sewage Transfer Act. Our first presenter this morning is Mr Neil Freeman, professor at the University of Toronto. Good morning and welcome. Your presentation time this morning is 15 minutes, and that includes your presentation and questions from the caucuses.

Dr Neil Freeman: Thanks very much. My name is Neil Freeman. I have a PhD in political science from the University of Toronto, where I'm presently an adjunct professor of political science. I'm also a public policy consultant on municipal and provincial utility issues, and the University of Toronto Press published my book on Ontario's electric industry last year.

My submission is a detailed analysis of the current statutory status of the municipal and provincial water industry and indeed a historical analysis of the evolution of the municipal and provincial water industry, as the table of contents illustrates.

I'd like to make three points today; hopefully it won't take very much time. I think we all understand that the purpose of the bill is to get the province out of what is thought to be strictly a municipal issue, and that is providing water and waste water services in municipalities. But the Ontario Clean Water Agency, which in fact originated as the Ontario Water Resources Commission in 1956, has always had a dual-purpose role, more than just to be a service provider in the municipalities; the Ontario Clean Water Agency, as the successor agency to its predecessor, has always had a residual provider role.

Indeed, this is why the Ontario Water Resources Commission was created, because there were many municipalities in the province that were lagging behind other municipalities in terms of the provision of water

and waste water services. There was a need for the province, whether for public health reasons or for economic development reasons, to give these municipalities that were lagging behind some assistance.

The Ontario Clean Water Agency, as the successor to the Ontario Water Resources Commission and the Ministry of Environment, which the Ontario Water Resources Commission was folded into in 1972 and then taken back out of in 1993 to create OCWA, has had this dual-function role, both residual provider and alternative service delivery provider for municipalities. I would argue to you that it is because OCWA has had this dual function that it has been able to assemble a critical mass of expertise to be able to provide services in the weaker municipalities. If it wasn't providing the services in the stronger municipalities on this alternative delivery service model, it might not be able to provide the services in the weaker municipalities.

Should OCWA be put out of business, there is a danger that the province would end up having to establish more costly programs to subsidize development in weaker municipalities or pay for different types of mechanisms to ensure, for public health reasons or economic development reasons, that municipalities are kept up to current and acceptable standards.

My second point is that Bill 107 should not be seen in isolation. While it seems to be neutral in terms of its effect on municipalities in that it doesn't tell municipalities what to do with the facilities when they are transferred from OCWA, in fact there is a completely new municipal context in which these assets will be received. For this reason, I would argue that Bill 107 has to be seen within the context of the Bill 26 and Bill 86 amendments to the Municipal Act, known as the Savings and Restructuring Act and the Better Local Government Act, both of 1996; and indeed it should be seen in the context of the proposed new structure for the Municipal Act, and that is for municipalities to be given natural person powers. This is the environment in which the decisions about the future of OCWA assets will be made at the municipal level.

The significance of Bill 26 and Bill 86 is that they changed the nature of how a municipality goes about establishing and disestablishing water and waste water utilities. Indeed, since 1887 it had been the case in the municipal water industry in Ontario that for a utility to be established or disestablished it needed the assent of the electors. The reason for this was that water as a business is a monopoly business, and it was thought that water customers, when they're locked into a monopoly situation, should have a say. The result of this has been that public water utilities have very much customer-owned

utilities, but as a result of Bill 26 and Bill 86, municipalities no longer need to receive the assent of their electors to change the status of a public water utility and indeed they no longer need the assent of the electors to privatize and franchise a water utility.

0910

This new context will be even more significant when these new natural person's powers are granted to the municipalities as expected, because what it means by giving municipalities natural person's powers is that the municipality will be free to operate like a private business and either use its natural person's corporate powers to contract with private operators or fall back on its traditional bylaw powers to establish a public utility. I bring this up because decisions that will be made over the assets received from OCWA will be made in this context, and thus water customers and local residents will have little way of being consulted.

Municipalities like the ones that OCWA was put in business to support, the ones where OCWA was a residual provider, will likely be the ones that are in a weak financial or administrative position and will not be capable, necessarily, of taking over the transferred OCWA assets. My contention is that the result of this is that the province is in effect making the decision on how these assets should and will be privatized, because the municipality won't have the capacity to look after the utilities themselves.

My third point is that OCWA has been an efficient and effective provider, especially since was moved out of the Ministry of Environment in 1993, and indeed it is an alternative service delivery provider for municipalities, precisely what the province wishes the municipalities to do: explore all their options.

My further contention is that OCWA could be run solely as a business, and ironically, it already has the natural person's corporate powers that the province wants to give to the municipalities. Further on this view that OCWA could be run as a business and should be run as a business, I would suggest that the weakness of OCWA is that it hasn't been allowed to run like a business. It's structured in statute law to have a board of directors of up to 12 persons, but to date, to my knowledge, it only has four deputy ministers appointed to the board. OCWA, to my way of thinking, could be much improved if it were left to be run like a business, if private sector directors and other directors were appointed to give it a mix of leadership so that it wasn't solely under the control of the government through the appointment of deputy ministers. I'll leave it at that. Thank you very much.

Mr Floyd Laughren (Nickel Belt): A question on OCWA: We heard some private sector folks yesterday who compete with OCWA — the only word I can use — “whining about the role of OCWA as being unfair competition. We know that OCWA operated at an operating profit in 1996; forget the spread on its portfolio.

Mr Dominic Agostino (Hamilton East): I think he's agreeing with you this time.

Mr Laughren: We had to educate the parliamentary assistant yesterday, but we won't get into that.

They did make an operating profit last year, I believe, of \$2.9 million. It seems to me that's operating like a business and competing without subsidy, so I'm not sure I understand your concern about their having a board of directors who are public sector folks. Maybe they would have made more money — I don't know — and if they made more money, maybe the municipalities would have paid more for the services they receive. I'd be interested in knowing why you feel that it's been restricted because of that.

Dr Freeman: Personally, I don't have a big beef with how OCWA's being operated. My point is that if people believe it's somehow tainted by being public sector and somehow this means it doesn't operate like a business, why doesn't the government then appoint directors from other than just civil servants?

Further to your point about utilities and your prefatory remark, I've been to utility conferences in the United States where these issues have come up about unfair subsidy for the private and public. In fact, Canada and Ontario in particular appear to be going in a direction that is completely opposite to the experience of large municipalities in the United States, where under pressure from the private sector to tender the water or waste water services, the existing utilities go into a tender arrangement with the private sector and can deliver the services cheaper than the private sector, even under open competition. The private sector then has complained that it's facing unfair competition, which makes us have to ask the question, is the purpose of public utilities to provide a profitable business for the private sector or to deliver the goods at the cheapest possible cost for the consumers?

I think it would be wrong in Ontario if we fell into the trap of believing that the public sector shouldn't be in the business of providing utilities, because this is not even the direction that's happening in major municipalities in the United States. They're treating the public sector and private sector as competitors, and if the public sector can do it cheaper, the public sector legitimately should be in business to support the cheapest possible services for consumers.

Mr John O'Toole (Durham East): Thank you very much, Professor Freeman. I'm just very interested in your views. Do you think the public and private sector, OCWA and some other private sector group, should be in competition for the very reasons you mentioned: efficiency, price, service to the customer?

Dr Freeman: I think that's true, that competition won't hurt OCWA, and if OCWA can't win the business, then maybe it should lose the contracts. OCWA should not have a monopoly in any municipality, but should be a competitive service provider.

Mr O'Toole: The former Treasurer of Ontario has tried to convince you that OCWA made a profit on the operating side, which I guess is arguably true. What's your view on the full mandate of both the cost of capital the full cost of assets and asset acquisition and business planning and all those principles that a private sector company would have to take on to fully evolve and develop at cost to some profit centre, where OCWA is just sort of handed a bunch of assets and told, “Here”

some operating revenue. See if you can make it work," and a monopoly position? Do you think it is really fair to state that OCWA made a profit?

Dr Freeman: In my view, whether OCWA was handed a monopoly position, it no longer has a monopoly position and certainly won't in the future, because municipalities would like to put these contracts out for tender and certainly OCWA will lose business. But if OCWA in fact has certain subsidies from its inheritance of the Ministry of Environment function, that's the nature of doing business. If a private sector business had bought OCWA, it would have those advantages as well.

The point is, in a competitive environment should OCWA have advantages of the public sector? I would agree with you that no, it should be out there and if there's any subsidy from the province, it should be removed, but that OCWA none the less could and should be in competition, because the ultimate objective is to provide good service to municipalities.

Mr O'Toole: I just want to make sure I hear what you're saying, or at least understand what you're saying, in terms of the government's role is basically to provide the high standards of quality for water and discharge of water. Do you see any other role for the government besides the standards and the monitoring aspect?

Dr Freeman: What the Ministry of Environment does is where the public policy function should be. OCWA should not be in the public policy function. It should be run like a business.

0920

Mr Pat Hoy (Essex-Kent): Good morning. I want to touch on the subject material here where you talk about the grants not being the sole or deciding factor in making a decision to privatize. I think with municipal restructuring not yet completed in Ontario, it will be difficult for some municipalities today to say whether Bill 107 is good or not, because the restructuring has not occurred in the province as of yet.

If they choose to privatize, and recognizing that there would probably be shareholder expectations of a privatized water delivery system, what does this mean for the consumer at the end, when privatization takes place, do you think?

Dr Freeman: My thinking is that in the end public utilities, when transferred to the private sector, can only result in higher costs, because of taxes and dividends and other higher costs in the private sector. The only exception would be if the municipal utility is functioning poorly, and then it's incumbent upon the municipal leaders to get their utility into shape when looking at alternatives, rather than looking at the existing utility as a poorly functioning entity and the private sector as the only alternative.

Mr Hoy: In your experience, do you know of a percentage of municipalities that are running their water systems poorly?

Dr Freeman: No, I don't. I only presented that as a case, and this is the experience in the United States, that the threat of privatization has actually beaten into shape many poorly performing public utilities.

The Chair: Thank you very much for coming before the committee this morning. On behalf of the members,

we appreciate you taking the time to come and give us your best advice.

DOROTHEA COOK

The Chair: I'd next like to call on Dorothea Cook, please. Good morning. Welcome, Ms Cook. We're very glad to see you here this morning. Your presentation time is 15 minutes. That includes your presentation and questions from caucus.

Ms Dorothea Cook: Thank you, Madam Chairperson and members of the committee, for allotting me the time to make this representation.

The reason I'm here, simply as a citizen, is that I'm deeply concerned over this proposed legislation that has the potential to do profound damage, both to the physical and to the economic and environmental health of this superb province of Ontario.

There are far too many issues to be dealt with in 15 minutes, so I shall explain to you my three principal concerns. These centre around the process itself, around the provisions for sale to private corporations of water and sewage treatment plants by the municipalities in the context of other legislation and around the absence of regulation of a literally vital resource. The possibility of this legislation being enacted causes me great anxiety.

Concerning the process, the election campaign of this government gave no indication that changes were either needed or planned for water or sewage services; neither is a rationale provided in the bill itself. What crisis has arisen in the meantime to require this extraordinary action? Whatever the shortcomings of present arrangements, the public was not given the opportunity to consider the question before the election.

Since the introduction of the bill, there has been such insufficient notice of these hearings that they have had to be cancelled in Ottawa and Thunder Bay. This is scarcely surprising when there was inadequate notice given of them, effectively shutting out large numbers of the public, unless one happened to have been watching at the right time the parliamentary television channel during the introduction of amendments to Bill 103. At that time, some announcements appeared on the screen.

For those individuals who were otherwise alerted to the possibility of appearing before this committee, there was very little opportunity to prepare comments. For instance, I was given notice only last Thursday afternoon that I could make a representation this morning. This seems highly autocratic to me.

Such treatment of citizens is all the more remarkable since it has to be understood in the light of a public opinion poll taken in 1996 for the Ontario Municipal Water Association. That poll showed over 76% of Ontarians saying that water should remain in public control. Nevertheless, the provisions of this bill and of Bill 26 lead unmistakably to just the opposite result.

Meanwhile, during a period when not only the governance of Metropolitan Toronto but also education throughout the province and numerous other fundamental pieces of legislation are vying for public scrutiny, it is not in true democratic tradition to cram into the legislative calendar yet another item, in this case a bill of vital

significance, when proper consideration of it by the public is practically impossible.

Then, if the legislation is passed, it becomes immediately effective. Thus municipalities, whether or not possessing the necessary expertise, staff or resources, in the midst of restructuring and of financial constraints, are required to undertake a further burden. It seems to me that this process ignores the public's concerns, and by timing Bill 107 to coincide with other massive changes, it is strongly conducive to an unacceptable imposition of a reduced level of essential service to the population.

With regard to stress placed on municipalities, three factors are notable here: First, up to 40% reductions in provincial transfer payments have already been instituted. Second, the cost of administering the act, with its attendant potential liabilities, falls on that level of government with least access to taxation and a statutory inability to assume debt. Third, the government has announced its intention to download certain costs on to municipalities. Although the details change from time to time, some of the costs of welfare, public housing, public transport and long-term care for the aged are on the agenda for shifting to the municipalities.

In these circumstances, it is difficult to accept at face value the assertion by the minister that the government is committed to public ownership of our immensely valuable water resources and their associated public properties. Why has Bill 26 expressly removed the requirement in the Public Utilities Act that municipalities hold a public referendum on the sale of public utilities? That initial laying of the groundwork has prepared the way for quick and easy sales by municipalities and, thus, an escape from intolerable financial burdens. Moreover, the price has been established at an unrealistically low level.

Bill 107 allows for privatization of any and all municipal water and sewage facilities simply with responsibility to repay those provincial capital grants received since 1978 but without interest on the capital — see section 56.2(2) — and federal grants are not included in repayments either. Bill 107, in my estimation, then has everything to do with making it easy for corporations to buy and sell, for their own unregulated profit, an essential resource that the government morally does not have the right to sell.

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Two other issues allied to this fundamental question of stewardship of water resources are the needs for regulation of quality for consumption and for protection of the environment. Bill 107 addresses neither of these issues.

As population pressures continue to mount, exotic diseases are introduced, pollution increases and destruction of habitat with uncontrolled urbanization marches on, now is the time to ensure the safety of the water supply. For instance, recent newspaper reports of contamination of water supplies by cryptosporidium indicate the difficulty and expense of public health measures in an era of long-distance transmission of infection. Accordingly, public health, which is the first bulwark in the prevention of disease, has always focused on pure water supply and safe sanitation.

However, in Bill 107 regulatory provisions are devolved to the weakest and least experienced level. This arrangement caters conveniently to private interests. It

also adds to the potential for balkanized chaos and disruption with multiple jurisdictions. In addition, given that the Ministry of Environment has suffered large budget cuts, it is likely to be a vain hope that it will pursue vigorously corporations, municipalities or individuals not in compliance with regulations. Moreover, there is no provincial legislation establishing standards for safe drinking water. A highly significant omission from Bill 107 is its lack of provision for an independent regulatory body with authority to achieve compliance.

The foregoing omissions are especially disquieting when the establishment of private monopolies becomes a real threat, for it is plainly impossible for competition to be part of the provision of water and sewage services. That is an additional reason for the unacceptability of privatization of water and sewage services. The recklessness of making it easily possible for municipalities to sell out the birthright of succeeding generations to unregulated monopolies is one of the shocking aspects of Bill 107.

Another aspect of Bill 107's lack of protection for the public is the inclusion of section 11 in schedule A of the Municipal Water and Sewage Transfer Act. This is a broad and unnecessary immunity clause that hinders redress when its availability is most needed. Section 11, in my opinion, has no place in the legislation.

Looking forward then to long-term implications of Bill 107, the wrongness of downloading responsibility for water and sewage treatment to municipalities is clearly part of a larger picture. It is the province alone that can respond to land use planning; to road systems, with their impact on runoff; and to the geologic realities of trans-municipal watersheds, catchment areas and aquifers. What we really need are effective and imaginative conservation measures and prudent management of a public resource. But above all, because government concerns the lives of people and not profit-and-loss statements or efficiency, privatization has no place in the provision of water and sewage services, in my opinion. Bill 107 should either be withdrawn or privatization expressly prohibited.

I must say, although when I wrote this last night I felt there was no place for a monopoly, of course Professor Freeman's comments gave a completely different aspect in my eyes. I do feel, though, that my point about the process at the beginning is something so many people I know feel intuitively is extremely dangerous, that public input simply hasn't been available.

The Chair: Thank you very much for coming this morning. Unfortunately, there is no time remaining for questions, but we do appreciate the time you've taken to share your views with us. Thank you very much.

SAVE ONTARIO WATER

The Chair: Is Sarah Miller here yet this morning?

Ms Sarah Miller: Yes, I am.

The Chair: Would you please come forward. Do you have a presentation to distribute?

Ms Miller: I have two things to distribute, my presentation and another package.

The Chair: Good morning. Welcome. As you know you have 15 minutes for your presentation. We're very glad to hear from you.

Ms Miller: My name is Sarah Miller. I work as the coordinator of the Canadian Environmental Law Association, but today I'm going to be speaking on behalf of a group called Save Ontario Water. Save Ontario Water is a coalition that was formed this fall of citizens concerned about health protection, environmental groups and labour groups. It was formed when the Ontario government stated its intent to refer water and waste water services to their committee on privatization.

Our membership brings together a diverse group of people with considerable experience, a long history and understanding of the challenges facing our water and waste water services. Many of our environmental members have worked for decades to improve water quality, wise watershed management and water conservation as an alternative to building new, costly infrastructure. They've worked to protect adequate water resources for future generations in many efforts that were carried out by this province that looked like they might lead to some real water conservation initiatives but have since been shelved.

Other members in areas in Ontario now facing water shortages have worked hard to live within the natural water budgets in their areas by conserving and protecting groundwater. The unions which are members of our coalition and represent the people working in Ontario's water and waste water plants have contributed greatly to the health, safety and security of our water supplies. The other private sector unions which are members have contributed greatly by all the work they're doing to foster transition to cleaner production and manufacturing.

Public polls continue to reinforce the public's desire to have water services remain publicly controlled and to be subject to strong environmental protection. We feel with Bill 107 the Ontario government is moving these services further and further away from public scrutiny to the private sector. We feel that this devolution could even well lead to the complete exclusion of the public from future water policy decisions and severely diminish accountability to the public on the allocation of water, the setting of rates for water and sewage services, and the wise management and conservation of those services.

It's really hard to believe that this government is not working towards full-scale privatization when it took away the century-old public right to approve sales of public utilities by referendum in its Savings and Restructuring Act last year.

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Ontario we feel is much more vulnerable to harm from privatization than other jurisdictions where privatization has occurred, because it does not have a strong water protection regime. Although Ontario has jurisdiction over one fifth of the world's freshwater resources, the province has no water conservation policy. It has no enforceable safe drinking water act; it merely has guidelines. This leaves the public with very few tools to protect themselves from harm.

We feel also, as others speakers have said, that Bill 107 can't be evaluated in isolation from other actions of this government. Cuts to the Ministry of Environment and Energy monitoring and enforcement staff mean there are fewer people to detect water and waste water pollution.

Closure of government labs which offered free water testing has meant that municipalities have been thrown back on their own resources to finance and carry out this analysis. The cancellation of the municipal assistance program, which was administered by the Ontario Clean Water Agency, does away with all funds in the province for infrastructure renewal and improvement and is driving municipalities into the hands of the private sector.

It's for these reasons today that we're asking you to hold a full public inquiry into the state of this province's water protection and waste water management programs and laws, so that alternatives not contained in Bill 107 can have full public consideration, and we are asking that this bill be withdrawn.

Right now in Ontario there are some 30 private water companies already seeking business, and some of them have already been given contracts. In the Financial Times global water report put out for large international water companies, they anticipated Bill 107 and told their readers that transfer of about a quarter of the province's water and sewage treatment plants to local authorities would give them business opportunities. They also stated that the formal transfer of ownership will take place when provincial loans used to build the plants are repaid. We feel that the provision in Bill 107 to include these loans really isn't going to be a major impediment to discourage privatization; it's actually indeed just firmly placing the pricetag, a pricetag that many of these large multinationals can certainly afford.

Today, we've given you a package of documentation on the experience of privatization in the United Kingdom. We hope it will help you anticipate and prevent some of the same disastrous results in Ontario. In the UK, privatization has meant increased water waste, increased water pollution violations, decreased affordability, discrimination against the poor, increased health risks from water-borne and sanitation-related diseases, aggravation of water shortages and droughts and job loss for water and waste water workers. For the private water companies it has meant huge increases in executive salaries and shareholder dividends, capital to carry out mergers and global diversification plans. We're also getting indications in Ontario already that some of these things might be in store for us.

The question you have to answer for the public of Ontario is, will water privatization mean better protection of public health and safety?

All of the OCWA plants, as we heard from Professor Freeman, are the smaller plants in the province. Part of the original rationale for putting them into a crown corporation was to better manage those plants, to ensure there was good worker training and that those plants would be transformed into non-polluting operations, despite the fact that they didn't generate large amounts of capital to pay for those programs.

However, in the plants where private contracts have already been let in Ontario, one of the first things that happens is staff reductions. Provincial training programs for water and sewage treatment workers, which were provided formerly by OCWA, are likely to vanish with the transfer of these plants to municipalities.

In Ontario, the municipal sewage sector is still the single greatest polluter of our waterways from direct

discharges, and several of those plants still only have primary treatment. As other speakers have mentioned, in the last several years we've had several troubling outbreaks of cryptosporidium. Another Great Lakes city actually experienced hundreds of deaths from a similar outbreak. The question you'll need to answer for the public is, will privatization guarantee adequate funds for plant upgrades, improvements to safeguard pollution and public health? That certainly wasn't the experience in England.

We are told that public-private partnerships will still protect the public interest, but we think there is an inherent conflict in these partnerships. One partner is accountable to the public while the other is accountable to their shareholders, to provide them with profits. In the end, all profits will be generated from one source, and that is from the consumer.

A recent experience in privatization in Ontario sheds light on what partnerships could bring. Philip Environmental, a Canadian entrepreneur in Hamilton, was awarded the contract to manage the Hamilton-Wentworth sewage treatment plant in partnership with the municipality. Shortly after, a 40-million-gallon sewage spill occurred, backing up into basements, causing property damage and contaminating the harbour. The municipality maintained all the liability for the spill, for compensating homeowners for damage and cleanup, and it will need to sue its partner in order to recover the funds. Ultimately, it's going to be the taxpayer who will bear the cost of the litigation, bear the cost of the cleanup and the long-term costs of the harm to the environment.

Who will have oversight over protecting the public interest in the myriad decisions that are going to be made around these boardroom tables with these new partners? Who is going to guarantee the potential annual contract revenues, estimated by the global water report of the Financial Times at over \$125 million from the OCWA plants alone? If these plants are transferred to multinational businesses outside of Ontario, who's going to control the flow of the money? Is it all going to go out of province rather than going back into improving the infrastructure?

Public and private partnerships are already reshaping Ontario. In late 1996 York region decided to award a contract for the future water supply, likely to amount to hundreds of millions of dollars due to future growth and development, to a consortium of Consumers' Gas and one of the British water companies, Northwest Water. While there were few public open houses held as part of an environmental assessment, calls for a full environmental assessment of this large undertaking have as yet received no response from the Minister of Environment.

There is considerable public concern that the need for the project hasn't been demonstrated. The preferred alternative selected by the partner involves taking most of the region off groundwater and building a series of very costly pipelines and new treatment plants, running pipelines from Lake Simcoe and Lake Ontario. Consumers in the region will have no choice but to have their water supplied by this one monopoly, and all the capital-intensive costs of the scheme they selected, much more expensive than the groundwater provision currently in existence there, will be passed on to them.

Who is going to regulate the price of water passed down to consumers by water monopolies in Ontario to ensure equitable and affordable rates? How will water conservation even be a viable option for the private sector, who will get higher profits from higher water use? Are we propelling Ontario further down an unsustainable path?

There is a lot of rhetoric now about the advantages of public-private partnerships, and much of it is very ideological, supporting competitiveness for the sake of competitiveness, visions of Canadian entrepreneurs entering global markets and offering the public choice. Maggie Thatcher painted the same picture for British consumers in 1989. They could participate in the new world order by becoming shareholders in the new companies.

In Ontario, there definitely is a new climate of competitiveness, and that competitiveness is leading us to the unfortunate question of: Will it be the large French or British companies or the Americans, or will it be the multinational gas and pipeline companies, or will it be the home-grown companies that will land contracts for Ontario's water resources?

If you do not come to terms with how these companies will be regulated, you will be failing the citizens of Ontario. Until all the questions we have asked are answered, we're urging you today not to proceed with Bill 107.

The Chair: Thank you very much, Ms Miller, for coming before us from Save Ontario Water. Unfortunately, there is no time remaining for questions, but we thank you for taking the time to come this morning.

0950

ASSOCIATION OF SUPERVISORY PUBLIC HEALTH INSPECTORS OF ONTARIO

The Chair: I ask Harvey Bones, Wes Terry and Oryst Zyhar to come forward. Welcome, gentlemen. You have 15 minutes for your presentation, and that includes questions from caucus.

Mr Oryst Zyhar: Good morning. My name is Oryst Zyhar, director of the health protection division for York region, and I wish to thank you for the opportunity of appearing before this committee as a representative of the Association of Supervisory Public Health Inspectors of Ontario. Also in attendance is Mr Harvey Bones, president of ASPHIO; and Mr Wes Terry, who is the environmental administrator, and he is representing the part VII delivery organizations in northern Ontario.

ASPHIO has a long-standing history of assisting the Ministry of Environment and Energy in the delivery of part VIII, and as a result of our concerns for and our expertise in not only public health programs but also other programs which can affect the health of our communities, our association felt it was imperative to make this presentation to this standing committee. The goals of the part VIII program are to ensure that the rural, un-served areas of the province are provided with an economic, environmentally friendly and healthful method of sewage treatment and disposal that does not have an adverse effect upon the quality of the subsurface environment or to public health.

Bill 107 is intending to transfer a major portion of the responsibility for private sewage disposal systems from the current delivery agencies of the Ministry of Environment and Energy and the upper-tier governing authorities by downloading to lower-tier municipalities. This causes our association great concern, as the current delivery agencies, which are mainly health departments, have over the years endeavoured to gain expertise, knowledge and professional standing in the review, inspection and approval of private sewage disposal systems.

Environmental protection and public health programs will inevitably suffer if building and private sewage system approvals are centralized at the area municipal level. There will be a greater potential for conflicts of interest or abuses of protection principles. In Ontario, health units have the existing expertise, experience and established procedures to deliver this service effectively and efficiently and have administered the part VIII program on behalf of the Ministry of Environment and Energy in most areas of Ontario since at least 1974.

It is ASPHIO's position that a healthy environment is paramount in the maintenance of optimum human health and that safe disposal of raw domestic sewage wastes, from a pathogenic disease prevention viewpoint, has a direct link to the protection of human health. Many health units have developed or contributed to the development of broader groundwater protection strategies, as it makes sense to have the impacts of all significant sources of groundwater contamination, including private sewage disposal systems, considered by the same people.

As of September 31, 1997, these skills, accumulated through education and experience, will be replaced by inspectors with significantly fewer qualifications and limited or no experience. Accountability will be lacking or non-existent as the accumulated experience of over 23 years will be lost.

ASPHIO maintains that effective supervision of the design and installation of sewage disposal systems is fundamental for the protection of public health and the environment. At present, most municipal officials responsible to perform activities under the authority of the building code do not have training in hydrogeology, soils, public health, chemistry or biology, and how these disciplines relate to sewage composition and sewage treatment.

Currently, health unit activities include:

- The inspection of proposed lots and assessing their suitability for onsite sewage systems.

- Reviewing proposals for new sewage systems, including alterations to existing buildings or structures which may affect the operation of existing sewage systems.

- Attending hearings before the Ontario Municipal Board and the Environmental Appeal Board and court cases relating to sewage systems under part VIII.

- Responding to complaints related to sewage systems.

- Investigation of malfunctioning sewage systems and advice regarding probable cause of the malfunction and the potential corrective action required.

- Inspection of and issuing certificates of approval for hauled sewage disposal sites.

- Providing advice and recommendations to the approvals branch regarding issuance, suspension or revocation

- of licences under section 80 of the Environmental Protection Act.

Responding to legal letters respecting sewage systems and property transfers.

A close liaison exists between the environmental health section of each health department and the upper-tier planning department regarding development applications which have potential health and environmental implications. Lot assessment for an onsite sewage disposal system is a complicated combination of various components, such as topography, geology, hydrogeology and regulatory requirements. Building inspection departments and their supporting ministry do not have the background or resources to assess the public health implications of certificates of approval applications, and furthermore, the building code assumes that construction is always possible and sets out the requirements for building.

Unlike building inspections, a lot inspection for the purposes of sewage system assessment goes beyond the site-specific parameters of the lot in question, as consideration of off-site impacts to ground and surface water supplies must be weighed. This planning component is significant, as it may impose restrictions on the size and location of the structure on the building lot. The implementation of this component is required prior to the application of the building code requirements.

ASPHIO also identifies that the process for dealing with complaints has a significant cost attributed to the administration of the part VIII program, as it often requires several inspections to abate the health hazard. This complaint activity has no source of revenue until a certificate of approval is applied for. It is questionable how Bill 107 will allow the regulatory agencies to recoup the costs of this service. Complaint investigations often lead to an increase in enforcement activities due to illegal system repair or installation.

It is ASPHIO's position that Bill 107 requires amendment, as the timing of the October 1, 1997, transfer date does not coincide with the calendar year or fiscal year used by the health departments or the Ministry of Environment and Energy. Current providers will need to terminate their existing programs prior to the end of the construction season unless other arrangements are made. This short time line is also inadequate to develop and provide certification training for the new non-health department staff in epidemiology, hydrogeology, soil composition, communicable disease control and general public health principles.

The intent of Bill 107, to provide one-stop shopping for the consumer by having local building officials trained and certified to provide a sewage system inspection service at the same time as a building inspection is being carried out, is flawed, as most sewage system installers work independent of the home builder and require an inspection prior to moving their excavation equipment off the site. In all likelihood, these inspection requirements will not coincide with a building inspection and therefore will require a special trip to the site by the inspector. This defeats the purpose of fewer inspections and less cost.

Currently, many municipalities and regions are involved in amalgamation and governance discussions,

and it is ASPHIO's recommendation that Bill 107 be amended to ensure that the responsibility for review, inspection and approval of private sewage disposal systems remains an upper-tier municipal responsibility. This would ensure consistent delivery in all municipalities and not just those that can afford it.

ASPHIO further recommends that Bill 107 be amended to ensure that part VIII of the Environmental Protection Act and regulation 358/90 remain a responsibility of the Ministry of Environment and Energy. However, should the Legislature intend to transfer the program to another ministry, ASPHIO would support the incorporation into the Health Protection and Promotion Act and have it identified as a mandatory core program.

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In the event that the responsibility for part VIII is transferred to the Ministry of Municipal Affairs and Housing, ASPHIO's recommendation would be that part VIII and regulation 358/90 be transferred in its entirety and maintained as a separate, standalone section in the legislation, provided that the upper-tier municipality is identified as the delivery agency of this provincially significant program.

ASPHIO has provided you with 30 copies of our presentation and supporting documentation, and we would again offer our commitment to meet with ministry staff to further discuss any amendments or the implementation of any proposed changes to this program.

At this time, I would like to introduce Mr Wes Terry, who will address this committee. Afterwards, our delegation would be pleased to take any questions. Thank you for considering our position.

Mr Wes Terry: Madam Chair, members of the committee, I represent the northern Ontario delivery agents, and what I intend to do today is simply give you a cut-down version of a presentation that I had hoped we would have delivered in Thunder Bay, had the committee had the opportunity to keep to its agenda.

First is the timing of the intended transfer. We feel that October 1 poses some very significant difficulties. There isn't a training program in place at present. It's currently in the process of being developed. To contemplate training inspectors and installers between now and the beginning of October is pushing it a little bit.

The second concern we've got is the ability of smaller municipalities in rural Ontario to take on the responsibilities of carrying out this program. There are many municipalities out there right now that either have no building inspection provisions or provide a very reduced building inspection provision. Asking them to take on the responsibility of delivering the part VIII program I don't think is doable. I don't think they're going to end up being capable of carrying it out.

Northern Ontario also presents a very unique situation in that we represent, geographically, about two to three times the total area of the province physically, and in excess of 90% of that land mass is made up of area that has no municipal jurisdiction. This legislation requires that the Ministry of Municipal Affairs and Housing carry out that particular program. I put it to the committee that to date in unorganized territory there are no building inspections being carried out; never have been. This

creates some very unique difficulties for that particular ministry to get a program up and running where they haven't been operating a program consistent with what other municipalities in the province have been carrying out.

Those are the three things I'd like to put to the committee for its concern. As Oryst just said, we'd be more than happy to answer questions.

Mr Doug Galt (Northumberland): Thank you for your presentation and expressing to us your areas of concern. First, I'd like to put your mind at rest with the October 1 date. We too have been concerned with that date. With the minister's presentation yesterday, I can confirm that it will not be prior to January 1, 1998, and we are looking at alternative dates down the road. We can overcome that concern that you have with October 1.

Certainly with smaller municipalities I don't think there's any question they're going to turn to the health units to continue the inspection and work with the health units into the future. Part of the reason for bringing this in is that we're looking at the training and certification as a ministry and ensuring that all people are trained to a certain level. I noticed that you're pointing out the abilities of the health unit. We appreciate that and recognize the kind of service that's been there before. We just want to make sure there's some uniformity.

If there's any time left, I'd be interested in your comments further as they relate to single-tier and upper-tier handling of this in the future. You were emphasizing a couple of times the upper tier. Could you expand a little bit on that?

Mr Terry: We don't have upper-tier government in the north, but I think if you look at how the program is being delivered currently, it's being delivered for the most part by health units. In six out of the seven northern area health units do the program and in one other it's delivered by a conservation authority. They're all delivered at an upper-tier level.

The health unit I work for represents all of the district of Algoma. Sudbury has the same situation. We've got staff who are conveniently placed across those districts who are currently capable of carrying out this program should we be the agents either for the province or for a grouping of municipalities. I've got some concerns about how you develop contracts with 24 municipalities in Algoma and another 26 or 27 over in Sudbury.

Mr Hoy: You've heard the parliamentary assistant say that January 1 may be the new date as opposed to October. Do you feel that's enough time, an added three months?

Mr Zyhar: We've just been circulated something from a consultant hired to set up a training course and a certification course. That just occurred last week, and it is a very rough sketch of what they intend to do. Ever that circulation was lacking in quite a few areas of what we the health agencies already perform. The consultants themselves are not aware of the implications of the program and the amount of work required in the program.

In saying that, trying to get back to these consultants to assist them in setting something like that up is going to be a time-consuming process, and in most areas right now this is when the busy season starts, this is when

construction begins, this is when lot assessment takes quite a bit of our time, recreational beach sampling etc, so our assistance to them will be forthcoming but it may not be as quickly as they need.

January 1 is an extension. We would like to see it go a little bit further. That's why our offer stands. We will meet with any ministry staff you like. We will sit down with them at the table as an association and come up with some kind of guidelines or timetable for implementation of the change in the legislation.

Mr Laughren: What does it cost now for an inspection of a septic field bed?

Mr Zyhar: It would depend on the intricacy of the system.

Mr Laughren: For an ordinary homeowner.

Mr Zyhar: I work in York region. I am the director in York region and in charge of the part VIII program. We operate a program where the minimum we inspect is five times; the maximum is 10. That's 10 separate site visits to a lot. The installation of the sewage system: The cost to the homeowner can vary anywhere from \$3,000 to \$15,000 for the installation itself. Our permit fees begin at \$100 and can range depending, after a certain point, on the square footage of the building.

Mr Laughren: I live rurally and I had a complete new septic field bed put in — not the tank, the field bed — and I don't remember a fee at all.

Mr Zyhar: There would have been a fee for the certificate of approval. The contractor may have taken it out on your behalf.

Mr Terry: Those fees range between \$100 and about \$450, but the province currently subsidizes the program up to about 75%. It's not doable at \$100 to \$200 or \$300 any more.

Mr Laughren: I didn't have that many inspections.

Mr Terry: I think the standard across the north is to do two inspections.

The Chair: We'll cut it off at this point. Gentlemen, on behalf of the members of the committee, I thank you for taking the time to come this morning to present your views.

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ONTARIO MUNICIPAL WATER ASSOCIATION

The Chair: Could I please call Mr Black and Mr Beck from the Ontario Municipal Water Association. Good morning. Welcome. Very nice to see you.

Mr Dick Beck: My name is Dick Beck. I'm a member of the board of directors and a past president of the Ontario Municipal Water Association. I'm joined here by Don Black, executive director of our association.

We're happy to be here. We're glad you invited us to comment on Bill 107. We speak for more than 200 public water authorities across the province which supply water to more than eight million Ontario customers.

All of these authorities are involved in the supply, treatment and distribution of water in the province, and we therefore take a great deal of interest in policy matters related to the provision of drinking water. Our members have access to a lot of expertise and skills for direction

and leadership, mainly on policy issues; that's what we're concerned with here today.

One of the main points of our mandate is the public utility concept as a system that sets up and provides and ensures safe, reliable drinking water at an at-cost basis and on a fee-for-service basis. This way, our waterworks are or can be financed entirely by dedicated revenues, and these are revenues from ratepayers, not from taxpayers at either the local or the provincial level. The separate public utilities, in particular, are directly accountable to the public. A lot of those, as you know, are directly elected and we don't think there's any better connection to the public than that.

We emphasize full financial transparency, no cross-subsidization of services when it comes to services like water, and for that matter electricity and even sewage, and the levy of user fees.

This approach for the water system has much broader relevance, and it's applicable as a model for other utilities such as electricity and sewage. Some utilities already have those things attached to them and there could be more.

We think public utilities serve the best interests of the customer in terms of cost and water quality and reliability. Quite often in discussions about privatization, arguments about whether that's good or bad or efficient, the customer, the end user, the ratepayer is forgotten. When you apply the test of what does it do for the ultimate ratepayer, sometimes these other ideas fail.

I'll try to give some more specific comments on Bill 107, but I would have to say that there's so much going on now, there are changes to the Municipal Act and other acts which are going on, it's difficult to separate the ideas in all cases because they can impact one on the other. Forgive me if I'm not dealing directly with Bill 107. If not, I hope you can use your influence, if you believe in some of these things, on the other bills.

The combined effect of all these changes in the Municipal Act, for example, and the Municipal Elections Act are having an impact and will have an impact on how Ontarians have a say or don't have a say in the supply and distribution of drinking water.

We are concerned about how fast things are changing. We're concerned about all the restructuring studies and the impacts these are having on water utilities in the province. Things are moving quite quickly.

A lot of our concern stems from the fact that the municipalities are going to see additional costs downloaded from the province. They're going to be searching even more for ways of raising revenue. Some municipalities have already used or diverted revenues from water systems to other uses. We think this is completely wrong for such a basic commodity as water. There are others who, while they haven't done it yet, quite openly acknowledge that it's one of the things on their mind. We think this would be bad in the long term for the province's reputation and the customer's ultimate interest in good, clear water.

We think the government does have a role to provide a focal point for all of this. We know it has a role for standards and the enforcement of quality. We are aware that the minister has stated he intends to maintain quality

levels and standards and to enforce them. I think the term is "tough" standards. We're not asking for tough standards or tougher standards. There are good mechanisms in the province now for establishing standards and coordinating with the federal government and the other provinces. What we want to see is that municipalities have the financial ability and the political will to deal with maintaining these standards.

The question is, how do you achieve these things? We agree with the objectives, and we don't want to be micromanaged by the province. Most of the utilities and certainly the public utilities have operated very well managing their water systems, but there is certainly a need for some coordination of general policy. There doesn't seem to be an overall framework of policy for drinking water in the province. How do you handle it in big communities? How do you handle it in small communities? But certainly water is considered to be a very essential service, and I'll mention a little bit more about that in a second.

We'd be glad to work with the government to develop more details. We and other organizations that we cooperate with have an interest in developing a broader plan for the long-term approach towards drinking water sources and treatment in the province. But we are concerned a little bit with Bill 107 as it's presently laid out. Even though they propose to put the assets of OCWA back into the municipalities, we're concerned that there are not strong enough provisions to prevent privatization of those plants. I could spend a long time talking about why, but time doesn't permit and we can get into that separately.

The legislation does not ensure that privatization will not result. It does say that yes, the money that was loaned to the municipalities would have to be repaid if a utility is sold, but it doesn't say, for example, that the money or whatever other proceeds come would have to go back to the ratepayers who paid for it in the first place. You can bet your bottom dollar if somebody buys something, they're going to expect to recover that in rates from the ratepayers in the future. In effect, that means that the ratepayers end up paying for it twice. It's a very dangerous and almost irreversible avenue to go down. I'm well aware of what has gone on in the UK, and I can refer you to an excellent textbook that has assessed the results of that.

I'm going to have to skip a lot here, but one of the things we've done recently was to commission a poll by Pollara. I think you have some information on that, so I'm not going to go into a lot of detail. In sum, over 80% of Ontarians think drinking water isn't a commodity, it should be provided at cost to its customers, and people feel that the money they pay in water rates should be used solely for improving the water system and not other municipal services. They believe the public should be consulted when the government is making key changes in how systems are run; for example, if a water system should be run as a public utility or a department of council and so on.

Why is drinking water not considered a commodity like other things? Drinking water and electricity — and you could probably add sewage services — are considered extremely essential services. Why is this? They

are essential to life. They are typically inelastic in price and demand. In other words, they're so essential that it almost doesn't matter what the price is, people are going to use it. If it's in a private enterprise charging more because they're more interested in their shareholders, people are going to have to pay it anyhow. They are monopolistic by nature, so it's just a question of whether it's a private or a public one.

1020

Should money just go to services? Certainly. Toronto had a problem a couple of years ago. When they diverted, they reduced their water maintenance fund from \$15 million down to \$5 million, and they regretted it after they did that. They used it for other purposes.

We have a five-point plan — we don't have copies for everybody, but we'd be glad to provide extra copies later, if you wish — financial transparency; public accountability; natural efficiencies through integration of utilities, and this is more important now with all the restructuring going on. Let's not destroy the efficiencies of combining electricity and water and often sewer. Let's have full cost-benefit studies before any privatization, and that includes the transferred OCWA plants, and meaningful public input.

It's a pity to see the public systems that have been developed over 100 years going down the drain by a simple motion of council in many cases. That's what some of this legislation does.

I'm going to stop now so that we can have some questions and try to give you some comments on it.

The Chair: Thank you very much. Just for the information of the members here, the presentation will be distributed to everyone so that you will have that.

Unfortunately, we only have about two minutes left for questioning, so we'll begin with the Liberal caucus, and I ask you to keep your questions or comments very brief.

Mr Agostino: The concerns you've outlined today were consistent with what we heard yesterday in London particularly around the issue of privatization. What's so ironic is that most government members around this table, the parliamentary assistant — and the minister himself yesterday confirmed that he believes the privatization of water services is not a good thing and that it would not be wise for municipalities to do that. He's leaving it to the good faith of municipalities that they won't do such a thing.

Do you believe this bill should have a provision in place that would prohibit municipalities from selling off not the operation, not the operating part of the thing, but the assets of the water and sewer infrastructure, and turning control of that over to the private sector? Should there be an amendment to this to prohibit that, in your view?

Mr Beck: Yes. It's a very good point. Ownership and control is the basic point, very key. It would be very nice if there could be something in place in the legislation that would prevent that. We don't have quite as much faith in all these different municipalities doing the right thing. That's it in a nutshell.

Ms Marilyn Churley (Riverdale): Thank you for your presentation. It's good to hear from such experienced people who have been in the business, so to speak, for long time.

Building on the previous question, what I'd like to ask you is this: Given the kind of downloading that has already happened and more to come in the future to municipalities, do you have a concern that even if municipalities would like to not privatize, because of the huge costs of infrastructure and all the other costs associated with this delivery, they'll be forced to do it if they have that opportunity, even if it's not their choice?

Mr Beck: How shall I put it? People who hope to accomplish something for the customer through that mechanism are kidding themselves. You don't get something for nothing. Municipalities have the capability, even if they haven't been used to doing it, of raising their own financing, of shopping around for some good help on expertise, combining, if necessary, with utilities. You'll pay just the same through the private company. They're going to be repaid for the capital they raise. In fact, it has been shown generally that the capital costs private companies more than it does public utilities. Somebody is kidding himself if they think they're going to solve their financial problems that way. They might. It might be less worry for council, but the customer will end up paying more.

Mr O'Toole: Thank you very much for a very informed presentation. Dwelling a little bit on what has been discussed, with the province's decision to get out of MAP, the municipal assistance programs, do you think it's important that the municipalities look at the full cost accounting operation of utilities?

What I'm trying to say is, in the past there was a suspicion that the province would come out with a bucket of money and help out municipalities with the assistance programs, so there weren't really full cost-recovery accounting principles. Like you say, they transferred some of their revenues around. Is this a good move, a responsible move to ensure a sustainable supply of clean, healthy water?

Mr Beck: Absolutely.

Mr O'Toole: It's an important initiative, really.

Mr Beck: It certainly is. The easiest way to ensure that this happens is to have a separate public utility. You must raise all the revenue you need from your ratepayers. You must spend it on your system; it doesn't go to shareholders; it doesn't get bled off for roads or potholes or anything else.

Mr O'Toole: How can you ensure that the monopoly becomes self-fulfilling?

The Chair: Excuse me, I'm sorry, Mr O'Toole. As they said yesterday, our time has evaporated. Gentlemen, I thank you very much for taking the time to come this morning.

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

The Chair: I'd next like to call forward, please, Mr Rick Lindgren from the Canadian Environmental Law Association. Good morning and welcome.

Mr Richard Lindgren: Good morning, committee members. My name is Richard Lindgren. I'm a staff lawyer with the Canadian Environmental Law Association, or CELA. Most committee members will know that

CELA was established in 1970 for the purposes of using and improving laws to protect the environment. We're very grateful for the opportunity to speak to Bill 107 this morning because, in our opinion, Bill 107 has a number of profound and adverse environmental implications.

It's our position that Bill 107 is fundamentally flawed. It's legislation that cannot and should not be supported either in principle or in practice, and for that reason we're recommending that Bill 107 be withdrawn.

Our concerns about Bill 107 are outlined in the report I filed with the clerk this morning. It's entitled Ontario's Water Resources: The Need for Public Interest Regulation. This was jointly prepared by the Canadian Environmental Law Association and Great Lakes United, and I trust members have copies of this report. You'll be pleased to know that I do not intend to review this report in its entirety.

Interjections.

Mr Lindgren: I can sense the disappointment about that, but I'll leave it with committee members to read this at their leisure, because I can guarantee you it makes for excellent leisure reading.

What I'd like to do in my remaining time is just simply draw the committee members' attention to the key concerns we have about Bill 107. Those concerns are outlined on page 1 of the report. I'm going to simply speak to these concerns and hopefully leave some time for questions at the end.

Looking at the report, and starting with item 1, the first concern we have is that no environmental rationale has been offered for Bill 107 and the legislation does not appear to be motivated by ecological concerns. It appears to us that this bill is driven by ideology, not ecology, and it seems to be ideology that's out of step with currently held public opinion, which seems to suggest that Ontarians do not want to relinquish public control of sewer and water services. I note that the previous speakers provided to the committee some recent polling material which suggests that the public overwhelmingly supports the retention of public control of sewer and water services.

The second concern is this: Bill 107 fails to expressly prohibit the privatization of municipal water and sewage facilities, infrastructure or services, despite the Ontario government's professed commitment to public ownership of such undertakings.

I didn't have the pleasure of hearing the minister yesterday express his concern about privatization, but I can tell you that thanks to the intervention of Ms Churley some time ago, I did have the opportunity to meet with the minister a few weeks ago to discuss this matter and again the minister maintained that Bill 107 has nothing to do with privatization. I guess I was a little bit relieved to hear that, but I also have to say I don't believe it and I'll explain why.

1030

Bill 107, as drafted, contains no express prohibition against privatization. If this government is committed to public ownership of sewer and water services, if this government truly believes this bill has nothing to do with privatization, this government should have no reservation whatsoever about putting forward and supporting an amendment to Bill 107 which expressly prohibits the

transfer of the title or ownership of sewer and water facilities or infrastructure. If the government is prepared to do that, much of my concern has been alleviated.

Item 3: Bill 107 makes no provision for an independent regulator of the water and sewer services industry in Ontario. We've heard previous speakers talk about the potential for monopolies to be created in the absence of firm regulation or a policy framework for sewer and water services in Ontario. We note in our submission that even in Great Britain, which has been subject to the privatization regime, they have an independent regulator. They put one in place. They perceived of, they recognized the need for an independent regulator. The problem is it's a regulator that doesn't have sufficient teeth. We say in Ontario if we're going to go down the privatization route, the quid pro quo is independent, effective regulation of that sector.

Turning to page 2 of the report: Bill 107 fails to enact or entrench the essential elements of the long-overdue safe drinking water act in Ontario. When the minister introduced Bill 107, he issued a press release that says this: "The quality of our water is not negotiable. When we turn on our taps, we expect clear, drinkable and safe water." That's a quote from Mr Sterling. That's a very laudable objective. The problem is there's nothing in Bill 107 that actually secures that objective. There are no enforceable drinking water standards that are contemplated or contained within Bill 107.

I've heard some previous speakers make reference to clear, tough, enforceable standards that exist in Ontario. I'm here to tell you there are no standards that exist in relation to drinking water in Ontario. We have guidelines, we have objectives, we have certain policy pronouncements, but we do not have enforceable standards that deal with the water that comes out of your tap. We have waste water standards. We have air pollution standards. We do not have standards that regulate what is in this glass of water. That's a very significant omission. That is why for the last 20 years CELA and other groups have been advocating for a safe drinking water act to provide the legislative tools that are necessary to ensure that the water that comes out of the tap is reliable, it's safe, it's healthy. Bill 107 contains no such safeguards.

Moving on to item 5: Bill 107 fails to restore statutory provisions that previously required electoral assent to the creation or dissolution of public utilities, or the granting of municipal franchises. This is an item that Professor Freeman spoke to earlier this morning and I simply adopt his remarks and commend them to the committee.

Item 6: Bill 107 fails to require full cost accounting analyses of privatization proposals and fails to provide procedural safeguards to ensure that municipal decisions respecting privatization are made in an open and public process. Without those kinds of safeguards, the public may be completely shut out of critically important decisions affecting the future supply of water in this province.

Item 7: Bill 107 fails to place any restrictions on proposals to sell, transfer or otherwise dispose of municipally owned lands used for waterworks or sewage works.

We're all aware that the bill says in effect that if a facility is going to be sold then provincial grants have to

be repaid. That's not a safeguard against privatization; that's merely a pricetag.

We also note there's nothing in Bill 107 that ensures that where privatization is going to occur municipalities receive full market value for the lands being disposed of. This was a significant oversight in Great Britain where significant pieces of publicly owned property were sold at less than market value and then were flipped over by the private interests who acquired it for a profit. That loophole has not been addressed in Bill 107 and needs to be.

Item 8: Bill 107 includes an excessively broad and unnecessary crown immunity clause that attempts to bar Ontario residents from bringing certain civil actions against public officials. I'll be quite candid. I'm a lawyer who sues government and I have a professional dislike for immunity clauses that bar residents from suing the government where they have been adversely impacted by an act or an omission by government officials. My position is simply this: If this new regime is going to work as well as is proposed or is contemplated, there should be no need for special statutory protection of public officials. If government officials ultimately undertake something that does cause harm to somebody or somebody's interests, the government should be held accountable for that in a court of law like any other defendant.

Finally, Bill 107 inappropriately offloads regulatory responsibility for part VIII sewage systems from the Ontario government to local municipalities. That's whether or not the municipalities are individually ready, willing or able to actually accept that delegation.

I note some of the previous speakers raised some significant technical and practical concerns about this aspect of Bill 107 and I would certainly say this to the committee: The septic issue is one that tends to get a little bit overshadowed by the rhetoric concerning the pros and cons of privatization, but there are lots of environmental concerns about the establishment, location and operation of septic systems across northern and southern Ontario. Let's not lose sight of that. Let's not forget about the need for firm and effective regulation and inspection of septic systems. Let's not all get distracted by the pros and cons of privatization. Septics is an important issue and can't be disregarded.

Those are the principal concerns we have about Bill 107. You'll note at the conclusion of my report, at pages 21 to 22, we set out 10 specific recommendations about Bill 107, and most of these recommendations propose certain amendments or deletions or clarifications that are necessary. Again, I'm not going to review these, I'll simply leave them with the committee to read at their leisure.

I will conclude by offering three general recommendations to this committee about Bill 107:

(1) Bill 107 should be withdrawn. There are just too many unanswered questions that need to be resolved and thoroughly considered before this legislation goes forward.

(2) I want to support the submission made earlier this morning that a public inquiry should be held to identify, to evaluate and to determine the most effective and

efficient ways to maintain and enhance our management of Ontario's water resources.

(3) If Bill 107 proceeds, and that's if it proceeds, then two amendments are absolutely necessary, in our view. The first is there must be an expressed prohibition against transferring the title or ownership of waterworks or sewage works to private corporations. Mr Agostino spoke to this issue this morning. I fully support that amendment and would certainly recommend that one be considered and passed. The second amendment that's necessary is that Bill 107 itself needs to contain provisions which establish an independent public regulator of the sewer and water services industry in this province. What we have in mind is a streamlined or hybrid version of the original Ontario Water Resources Commission, and that new agency needs to be given adequate duties, adequate powers to safeguard Ontario's water resources.

On that point I'll conclude, Madam Chair, by indicating that in our view Bill 107 should not be fast-tracked. We need to think long and hard about what we're going to do to protect water resources in this province before we rush headlong into the brave new world of water privatization. Those are my remarks, Madam Chair.

The Chair: Thank you very much. Unfortunately, time is just at the end, so there will be no time, I'm sorry, for questions today.

Mr Lindgren: I'm dreadfully disappointed and I regret that.

The Chair: But we do thank you for coming forward this morning.

I'd like to now call Terry Kelly from the Unemployed Workers' Council. Mr Kelly? No? Is Mr Sewell here? I should announce to the members of the committee that at 10:45 Mr Morra is cancelled and will be coming to see us this afternoon at 3, and Mr John Sewell is instead booked for 10:45.

1040

GREAT LAKES UNITED

The Chair: Is Mr Jackson here by any chance? We're so happy when some of our presenters come early. Would you please come forward. We're very happy to see you this morning. Thanks again for your promptness. You may begin when you're ready.

Mr John Jackson: I'm John Jackson. I'm president of Great Lakes United, which is a coalition of about 200 citizens, environmental groups, conservation groups and labour groups from around the Great Lakes, from both the Canadian and US sides of the border. You already have the submission that we put together jointly with the Canadian Environmental Law Association. Mr Lindgren just described that to you and the main features of it, so I will not repeat that, just confirm that we endorse and helped write it and are heartily in support of the comments that were just made.

What I am going to stress, however, is the importance of the water quantity issue, why this bill is so critical and its implications are something that you must take very seriously. I've given to your clerk a summary of a 200-page report that we have put together with the Canadian Environmental Law Association on water quantity issues in the Great Lakes. This report is the product of two

years of research, of pulling together the scientific information that we could find around the basin and in other jurisdictions to help us understand the implications of water quantity issues.

So many of us have focused on water quality issues over the past decade or so and have forgotten the importance of the supply of water for human beings and for all the other creatures that we share this basin with and why it's so important. The critical message from this report, *The Fate of the Great Lakes*, is that we cannot take our water supply for granted. That is something on which we have sat back in the past and said, "It will always be there." We have all this luxury of water but we can't assume it will always be that way.

The warning signs that the scientists are bringing to us very strongly and clearly are first of all that our consumption of water is growing and therefore we must be concerned about that; second, that the demand for diversions of water from the Great Lakes basin to other parts of the North American continent will increase. Ontario has always taken a very strong and clear position, saying that we must not divert water from the Great Lakes basin to other parts of the continent, but the pressures for that are increasing. As the thirst in the southwestern United States, as the thirst in Mexico expands, the proposals for major diversions will also increase.

The other factors that make this issue more complicated and more pressing for us is that the free trade agreements mean that once we open the tap to allow diversions into the States or into Mexico, we cannot close the tap, even if we ourselves are in crisis in terms of supply of water. Free trade has real implications for the diversion issue.

Finally, the climate change issue: All the scientists are now becoming quite unanimous in their predictions of the direction of climate change if we don't take very serious action now to stop that movement.

If you combine all these factors, what you come up with are some very dramatic figures about the loss of waters to the Great Lakes within our lifetimes. Jim McLaren, a well-known engineer who has worked in the field for decades, has put together the estimates from the various scientists in terms of what it means 40 years from now. That's within our lifetime. He says that within 40 years water levels going out of the Great Lakes into the St Lawrence River will have dropped by one quarter if the current trends continue and if the current pressures continue. That's a loss of a quarter of our water resource, and that is why it is absolutely critical that we now work very hard to develop a clear strategy for how we're going to take care of and protect the waters of the Great Lakes and the waters of Ontario.

The message from this is that we must develop a water quantity strategy. That must be done before we do activities like Bill 107, which has real implications. Bill 107 affects the control of the use and the treatment of waters of the Great Lakes. It decentralizes the water supply and treatment system. It potentially privatizes water supply and treatment systems, as you've heard from so many people. It does nothing to encourage, let alone require, those who develop and operate water systems to

consider basin-wide issues, and it lessens the provincial role. The result is that it would make it more difficult to protect ourselves from the situations that scientists are telling us will occur within 40 years unless we act now. It encourages piecemeal decision-making, which is absolutely contrary to what we need in terms of developing a water conservation strategy for the Great Lakes basin.

This bill has implications that none of us can fully predict with any certainty. It should be withdrawn until a clear water quantity strategy is developed that investigates issues such as: What are the best ways to achieve water conservation? What are the best ways to prevent the negative consequences of excess growth? What are the best ways to avoid diversion of water to the rest of the continent? What are the ways to deal with the implications of climate change? Who should have control over our water supply and our water sources?

This must be done first, because once our system is out of provincial control, which Bill 107 would encourage and further, it would become ever more difficult to develop a water conservation strategy for the Great Lakes basin. I urge you to put Bill 107 aside while we develop a water quantity strategy for Ontario.

You have copies of our brief and you've been given a summary of our report. If you want more details — it's a 200-page report — there's an address on the back cover of the summary you were given. Please don't hesitate to contact us. We'd be delighted to get it to you. Thank you. I'd like to leave some time for questions.

Ms Churley: Thank you for presenting. On some levels, what you and your group have been doing over the years reminds me of Rachel Carson and Silent Spring, in the very beginning warning us about chemicals and the negative impact on our health and environment. Unfortunately, we tend to talk more about water quality as opposed to water quantity. I recommend that everybody read this 200-page report because it's scientific work; it is very frightening stuff if we don't act. I appreciate your bringing this other element.

I know you're asking for this bill to be withdrawn. My party is asking for that as well, but this government does not have a record of withdrawing unpopular bills. They tend to forge right ahead, with minimum amendments. Unless something changes, that will happen here. In your view, what is the most important amendment they absolutely must make, if they do not listen to the people once again and withdraw this bill?

1050

Mr Jackson: First of all, I'm not willing to give up hope that they will withdraw the bill.

Ms Churley: Good for you.

Mr Jackson: I keep my confidence and my hope for that. The critical thing about Bill 107 is to make sure we don't lose control of the decision-making around our water supplies. That's why it is critical that there be provisions that will not allow the privatization of the water system. If the bill goes ahead, I would also want to see a very clear commitment in the legislation that the province is committed to developing within a certain time frame a water conservation strategy for the province, to have that clearly there with a strong time frame and say

that other issues are set aside until that strategy has been put together. That could be put into the legislation.

Mr Galt: Thanks for your thoughtful presentation — very interesting. Just a little clarification as it relates to Bill 107: It's about clarifying who does and who owns. In this case we want the municipalities to own; we certainly do not want private companies to own. We've put in the disincentive of having to pay back the grants. Some people feel that's not quite enough, but it certainly is a disincentive.

The province will continue to monitor and ensure that there are standards, ensure that there are certificates of approval for all plants to ensure that the Ontario drinking water objectives are being met, and all these plants certainly do operate under certificates of approval. The remaining quarter going to municipalities is getting it closer to the people, and the people really are the shareholders.

You talked about a water quantity strategy. There's been some talk about safe drinking water acts. I wasn't in the Legislature at the time, but I understand that the previous government talked a lot about a safe drinking water act. I'm wondering what happened, why that didn't fly and go through and be in place on June 8 when we won the previous election.

Mr Jackson: I honestly don't know why it didn't get on to the legislative agenda and become a bill that was passed. I'm not the one to ask that question, but please ask someone else.

On the issue you've raised, I'm hearing very clearly from you, and we've consistently heard very clearly from the minister that privatization, is not the intention of this bill, so it should be very easy for the government to put in something that guarantees that. What we're hearing from all sides is that this clearly does open the door and encourage privatizations, creates a structure that supports and encourages it. I'm hearing consistently that you don't support that. That's great, so please amend the bill to make sure it isn't there, that the door isn't open.

Mr Galt: You should realize that that opportunity was always there and it hasn't happened until now.

Mr Jackson: Yes, but the moves are out there already starting to happen around privatization of the water operation and the water systems.

Mr Bart Maves (Niagara Falls): This bill transfers the remaining 25% of water systems that aren't owned by municipalities to municipalities. Since 75% of existing water systems are owned by municipalities, run by PUCs but owned by the municipalities, did you lobby quite a bit to get OCWA to take over those other 75% in the past?

Mr Jackson: What we have been doing, for example, in the region of York, which is in the process of privatizing its system and is developing that privatization, is lobbying that government to not proceed to privatize the system.

Our concern is that the remaining 25% that OCWA has is smaller municipalities. Those are the ones that will be under the greatest pressure, for economic reasons, to turn it into the hands of private companies. The other reason they'll be under such pressure to put it into the hands of private companies is to do the monitoring, the operator

and the development of the plants. They will feel obliged to find an outside source to do it, because they don't have that expertise on staff now to do all that monitoring, which is very expensive to do, as they're finding the budget cuts they have to make. They'll look for another way.

Mr Maves: So the answer's no, there wasn't a lot of lobbying to move the other 75% back?

Mr Jackson: No, there wasn't, because we were confident OCWA would proceed to do a serious job with the smaller municipalities. We were lobbying and watching the big municipalities around that issue.

Mr Agostino: I've kept hearing, yesterday and today, from the government members that Bill 107 is not about privatization, that it does nothing in that regard. As I said yesterday, if you look at it in isolation, if you simply looked at Bill 107 and were totally oblivious to the world around us and everything that has happened in this place in the last year and a half, it seems like a harmless piece of legislation, that we're just transferring the last 25% to what 75% are already doing, and municipalities generally do a pretty good job of running water systems across Ontario.

But you can't look at Bill 107 outside the context of Bill 26, the first step in this process, which said that municipalities no longer have to hold referenda about privatizing. You can't look at it outside the context of this government's obsession with privatization — everything that moves, breathes or raises dust is going to be privatized — and you can't look at it outside of the context of the downloading and the dumping that's occurred.

When you put that whole picture together, clearly this is the final piece of that puzzle in this whole thing. This now makes it very easy and very compelling for municipalities to sell these services and to privatize these services. If municipalities privatize the operation of water and sewer services if there are certain contexts in place — if there is protection of successor rights, contracts being honoured — that could work. But I believe this opens the door completely to this occurring, and it's got to be looked at within context.

I'd go back to what you said earlier. If this government believes privatization is as bad as everybody tells us it is, for the life of me I cannot understand why they're so averse and why they object so strongly to changing this piece of legislation to prohibit municipalities from doing that.

I want to ask you as a consumer, as a representative of your organization, where do you believe the ability and the power to set water and sewer rates should stay, with the municipal councils or with the shareholders of large, international corporations?

Mr Jackson: It certainly isn't with the shareholders of corporations that are putting a profit factor into it, not simply the provision of a service for its people.

Mr Agostino: If this one thing was amended, would you feel comfortable with the 25% transfer to municipalities, if they amended the legislation to prohibit municipalities from privatizing the services?

Mr Jackson: I think the critical question here is whether those municipalities want the facilities. If they

don't, transferring it to them is not going to work if they're not wanting to do them.

The critical thing, though, is to put together a broader strategy to recognize that Bill 107 has implications in terms of broader strategy. Until we know we're putting together that broader strategy, I don't want to see any changes made.

The Chair: Mr Jackson, thank you very much for coming this morning, for being early, and for bringing us your best advice.

1100

JOHN SEWELL

The Chair: Is Mr Kelly here? No? Okay, Mr Sewell, could you come forward, please.

Mr John Sewell: Thank you, Madam Chair, and I'm sorry I was two minutes late. These things happen.

The Chair: We like to be prompt.

Mr Sewell: Thank you very much for rescheduling my time from this afternoon. I must say it's a real pleasure to be able to speak to Bill 107, which has an unusual thing in it, and it's something I've never seen in a bill, which is making the major legislation an appendix of the bill. I thought that was an absolutely brilliant act. I have no idea why it's done, except maybe to make sure that two bills didn't have to be introduced. I've never seen it before, that a bill is actually an appendix to another bill, and that's what section 1 says. You people are probably doing something historic here, for a reason. Who knows what the reasons are?

I have four very modest amendments that I would like to suggest to Bill 107. I want to start with section 17, which is the title of the act. I thought the title should be changed to better reflect the purpose of the act, which seems to me to be to throw to the wind questions of quality in water and sewage treatment. I think a more honest title to reflect the intent of what's proposed would be, "An Act to permit bad drinking water and poorly treated sewage in Ontario." I think that's what the act is generally intended to do.

I know there are some people who disagree with that, who think the act is to privatize water and sewage, and I've just heard the discussion about that. I believe that's one of the intentions and so I think there's an alternative title. The act could be called "A devious Act to privatize water and sewage facilities in Ontario." I say "devious" because it's not being done up front. That's the first amendment: I think you should be honest about your title.

The second amendment I'd like to make is in regard to a testing mechanism. People have talked about quality of water, quality of sewage, and I think it's important, in trying to ensure the transfers take place and quality is ensured, that there is a testing mechanism put right into the act. Just in thinking about it, I think the best people to do the testing are those who think that the transfer is a good idea and that it will protect water and sewage quality.

I would like to propose a new section which states, "To test the quality of the product of those facilities transferred pursuant to this act, all Conservative MPPs who supported this legislation in its passage are required

to do two things: (a) publicly consume two glasses of water produced by these facilities once every six months for the next ten years; and (b) swim in the effluent of the sewage treatment plants once every July and August for the next ten years."

If you're really convinced that what you're doing is protecting quality, you won't have any problem with those two things. I might say that the swimming produces a terrific photo op, where Premier Harris can be seen with his head just above the waves, just like Mao Tse-tung swimming in the Yangtze River. I think that's something you'd be proud of in the years to come.

I think there should be a testing mechanism and that, to me, is the best one. Make them publicly drink what's coming out of these things that are being transferred. Unfortunately, if they get sick there's going to be problem, given that there aren't too many hospitals left to deal with those kinds of things, but they'll have to deal with that themselves.

The third amendment I'd like to suggest is to section 11, on page 15. Section 11 is the one about, "No proceeding may be commenced against" everyone. I want to say how surprised I was at how limited section 11 is, saying, "No proceeding may be commenced against OCWA, its predecessors, a minister of the crown, a director..." and on and on.

Now, I understand the government's fear of lawsuits and I note that virtually every piece of legislation this government introduces says that nothing done under the act is subject to the courts — 103, 104, 105, 107, on and on. I understand your fear of the citizenry provoking court cases against you. I'm sure each of you on the government side finds it distressing to be subject to law and due process, which of course is why these sections keep reappearing.

What I think you should do is create a catch-all section, and here's some wording which I think might catch your mood: "Nothing we do is subject to the courts." It's short, succinct and it catches directly what you're doing. I think this itty-bitty approach of just introducing every law saying, "We aren't subject to law," is a dumb way of doing it and should be much more open. You might have some problems in wording like that with your constituents, because it's so blunt, but I think that's the honest way of proceeding.

The last amendment I would suggest has to do with the question of what happens to these plants. You and I know, no matter what you say, that the small municipalities to which transfer will be made will be entirely unable to operate these facilities. They haven't the money and they haven't the expertise. I believe the act is based on that premise and no other. The act is based on the premise of hoping that the plants will then be sold off; or if not sold off, then private companies will be given long-term management contracts for them. That protection about paying back debts I think is no protection whatsoever.

If that is the case, I think you should try and ensure that they're sold to the right people, that they don't just fall into any hands, and so you should put provisions in this bill to ensure their proper sale. I suspect the following amendment will express your hidden purpose fairly

well: "No facility may be sold by a municipality, or a contract for its management made, except to a company which has made substantial contributions to the Conservative Party of Ontario, or is friendly with individual Conservative MPPs and their families."

I think that's pretty straightforward and expresses fairly well the intentions that are involved: Make sure it doesn't get into the wrong hands. I know it sounds crass and blunt, some might even say it's unkind, but if you aren't passing this legislation in order to sell off these facilities, what other purpose does it have?

Conclusion: These suggestions are made in the firm hope that Bill 107 will die in committee. It's a bad bill and even my suggested amendments can't fix it. Kill the bill before its impact kills citizens of Ontario.

Mr Galt: Thank you for your presentation. You've questioned several times the purpose of the bill. Let me stress that the main purpose is for clarification of ownership; 75% of the ownership is presently by municipalities. There are some 230 plants in the ownership of OCWA and we want to see those under the ownership of the municipalities to bring it closer to the people in the community.

Mr Sewell: I don't believe you for a moment.

Mr Galt: If you read the bill, that's what it's all about.

Mr Sewell: I don't believe you for a moment. That's a dishonest reply, in my mind.

Mr O'Toole: He listened to you.

Mr Sewell: I don't like people saying things that aren't true.

Mr Galt: You mention an awful lot about the quality of water. I'd like to point out to you some water that's been produced by a water plant that's owned by a municipality, and I notice Marilyn Churley has been drinking it and it's quite consumable. This is what we're promoting in the future.

Yes, it's quite safe; I didn't even die.

I'd like to stress to you that all of these plants do operate under a certificate of approval and must meet the Ontario drinking water objectives, and that's the way it's going to be in the future, whether it's municipally owned or whatever. Certainly those certificates of approval will be in place and there will be the requirements and ongoing monitoring, as there has been in the past, that they will meet those objectives.

Mr Sewell: How many municipalities are eager to take these over right now?

Mr Galt: Prior to getting involved in this, 60 of the 230 volunteered on their own, asked to have them. That's before we even got involved with this bill. They were asking for them ahead of time; not a bad percentage.

Mr Sewell: About a quarter.

Mr Galt: A little over a quarter.

Mr Agostino: I want to thank Mr Sewell for the presentation. As usual, it's always difficult when you don't really tell us how you feel and hold back a bit. You've done that quite well again. Thank you. I think you've put a thing on it that many of us have concern about.

I want to go back to the issue of privatization, because I think you've hit a couple points there. First of all, I think the part about the debt, or repaying the loan or the

grant they were given over the years, is simply a feel-good smokescreen. Most of the companies involved are going to make so much money if they get their hands on the water taps, that will simply be a token cost of doing business, a drop in the bucket if they can incorporate it in the rate they charge consumers once it's privatized.

I guess what's disturbing about this bill and what's disturbing about what the government is saying is that really it's privatization, but unlike the other things they want to privatize, where they're throwing it in your face and telling you, "We're going to do it," this is done through the back door, because they realize politically it is not favourable with the public and the public simply will not accept that privatization of water is the right thing to do.

They're going to turn it around, they're going to blame the municipalities for being irresponsible and for not doing the right thing: "Those bad municipal councillors now have turned around and sold off your water and sewer services." Do you see that as part of the danger in this, that it simply is a political passing of the buck and making the municipalities look bad?

1110

Mr Sewell: Oh, yes. I have no question that all of these 100 pieces of legislation are there to destroy institutions of local democracy that give people a good way of life in their communities. That's what this is. If this was not what this is, we would have seen a really interesting white paper that would have described what terrific things are going to happen to municipalities, and we didn't. This is part of the blitzkrieg of this government, trying to destroy all of the institutions of local democracy, and water and sewage is high on their list. I think it's disgusting. I hope you withdraw it.

Mr Laughren: Thank you, Mr Sewell, for coming before the committee. There's something terribly disingenuous going on here. You, as someone who was involved in municipal politics and probably kept your hand in it for a long time as well, would understand this. In my own community, if the downloading goes through the way it's been announced, property taxes in the regional municipality of Sudbury will double. That's using all the numbers and netting out the education being removed and so forth. Can you imagine, if you were a mayor of a municipality and that was happening, would you be able to resist the sale of an asset like your sewer and water facilities?

Mr Sewell: No. That's exactly the kind of thing that happens. You're put in an impossible financial position and then you have to do something to try and raise revenue. The other thing you will do is drastically cut services at the same time. Those two things will happen under the proposals. There's no question about it.

Mr Laughren: I don't use the word "disingenuous" lightly, because it's a mean word, but I can tell you when I hear the government members say that they don't like the idea of privatization — the minister said it in London yesterday when he came before the committee, that he personally didn't like the idea of privatization — that's what I find disingenuous, because what's happening is going to force it and they know it.

Mr Sewell: The other thing that bothers me is that I don't think any of the people on the government side

were elected to do this. If you went back and talked to your constituents, none of them would support you on this. They're totally opposed to this agenda. It hurts them badly. What happens is you can't make eye contact with government members any more. They're terrified of people who are criticizing them, and also of their constituents.

It's very worrisome. This is not where Ontario was ever meant to go. It seems to me the government members are now captive of this evil force in the Premier's office. It's very frightening and you should not be going along with it. Your constituents don't support you and you know that. You know they don't support you.

The Chair: Thank you very much, Mr Sewell, for coming forward this morning.

HENRY MALEC

The Chair: I now call Mr Malec to come forward. Good morning, sir, and welcome.

Mr Henry Malec: I'm a part-time resident of Port Carling, which is in the district municipality of Muskoka. Port Carling is presently in the process of selecting and designing a water treatment plant, and I, as a private citizen, have had the opportunity to watch this process and participate in it. I would like to tell you my observations of what has happened now, in other words, pre-Bill 107, and what might happen after Bill 107. I'm specifically focused on section 2 of your bill, which relates to capital grants and the funding of a water treatment plant.

As you know, when a municipality decides to build major infrastructure, like a water treatment plant, they hire consulting engineers to do an environmental assessment. These engineers select potential sites — in this case, there were four potential sites — and do a study on them, a cost analysis, quality of water, that kind of thing. They ultimately produce what's called an environmental study report, which is this for little old Port Carling, 500 people; pretty hefty stuff.

They selected alternative C. In the costing of it they have: water intake \$560,000; low-lift facilities \$300,000; water treatment facilities, that is, the actual treatment plant itself, \$3.3 million. Utilities, engineering \$1.107 million; subtotal, GST, interest, and total of \$7.3 million.

Nowhere in this whole report does it say how this is going to be paid for. I know, having sniffed it out, that three quarters of it will be a grant from the province, 75% of it will be a grant from the province, so for every \$4 million spent, the municipality's only spending \$1 million. That is a good deal: "Wow, I can spend \$1 million and get a \$4-million facility." That's terrific. I like those kinds of deals. Seventy-five percent off, it's called. There's that.

Also not said in here is that the engineering fees — it just says, "engineering fees." They are 20% of the hard costs. If you add up all the hard costs and take 20%, those are the engineering fees. In other words, the engineering fees are sort of like a commission, if you want to think of it that way, on the cost. The higher the cost, the more money the consulting engineer makes.

I'm an engineer myself and I don't want to bad-mouth engineers, but human nature — if you're going to make

money on a cost, you'd rather get the higher one chosen than the lower one. That's just normal human nature.

Both those kinds of pressures conspire to increase the cost, not decrease it.

Let's say this all happened after Bill 107. The municipalities are going to pay for their own water treatment plant — no subsidies. Now the taxpayers are going to be looking at this with a very jaundiced eye and saying: "Why are you spending this money? Why are you doing this?" The pressure is going to be: "Now if it costs \$4 million, we're paying the \$4 million. Bring down the price, since we're paying for it."

Second, in my particular area up in Muskoka there's a very strong cottager association which also scrutinizes all costs. To date, they have been scrutinizing school costs because they're very disturbed at the money spent on schools they can't use. Their sights have been trained on school costs. That no longer will happen, because you're moving that on to provincial funding. Their guns will now be aimed at these kinds of things. This will be on the tax roll. A lot the Muskoka Lakes cottagers don't use piped water, so they'll be saying: "Do you really have to do this? Is this really necessary?" That's another pressure to bring the costs down.

Coincidentally with all this, when they selected alternative C, they did not select the existing site. The logical thing would be to go to where they're getting the water right now. Port Carling does have a water treatment plant, but a very primitive one. It definitely needs a new water treatment plant. But they didn't say, "Let's expand that site or put in modern treatment facilities." They just ignored it. If Bill 107 was in, maybe they would have chosen the existing site because it definitely is the cheaper alternative. They haven't even evaluated it in this study.

In conclusion — again, I'm speaking very specifically — Port Carling and many other municipalities definitely need new water treatment facilities. In Port Carling, for example, typical of many northern water supplies, it's called a pump-and-squirt system: You pump out the water, squirt some chlorine in it and send it on its way. When I told my wife that's the way Port Carling's water is treated she stopped drinking it, and I don't blame her. They just take out the big lumps. It's just sort of a screen there. It's really disgusting, even though Port Carling is in the middle of a pristine area.

As you probably read in the *Globe and Mail* yesterday, cryptosporidia parasites are now appearing in water supplies. They are cysts that resist chlorination. You need a proper filtration process. Port Carling needs one.

I hope you all recognize that we need a transitional stage from pre-Bill 107 to post-Bill 107. This project is being caught in the middle, so I hope the regulations are sympathetic to the funding of this particular project and other municipalities like this that are caught in the process.

In summation, contrary to my friend Mr Sewell, I fully support Bill 107. I think it will be terrific. I think the bottom line will be that we'll have a lean, mean costing of our water treatment facilities, and I think that will be to the betterment of the taxpayers in general. Thank you.

1120

Mr Hoy: Thank you very much for your presentation. I would have to say it's somewhat different from what we've heard over the last day and a half; none the less, I appreciate your comments.

I notice that at the bottom of the sheet we were handed, you say a funding program for smaller municipalities should be explored. I know of one agricultural group that is quite concerned about a number of issues, but one of them is the future use and quality of water. Naturally, those concerns would translate, from their point of view, I suppose, to rural, small municipalities.

In Bill 107, I think we're seeing that privatization that might take place in an urban area may tender availability — profitability, from the shareholders' point of view — of supplying water to very small, rural areas. I happen to know of communities, perhaps best described as hamlets rather than towns or villages, that think perhaps someday they would like to have water like their urban friends have.

Those are my comments as it pertains to the smaller municipalities, particularly the rural ones, in line with your saying that funding may have to be allowed for them to achieve what their urban friends may have already.

Mr Malec: I agree. By the way, if you travel through France you can see that every little hamlet, and there are 10 times more little hamlets than there are in Ontario, has its own fully functioning municipal system. They all have the water storage towers. Every little village is dominated by a hilltop with a little water storage tower. I don't want to get into privatization because I don't have views on that, but it works quite well in France. It doesn't seem to work that great in England, or the view is that it doesn't work that great, but in France it does.

Mr Laughren: I was shocked and appalled at your comments about the motivations of engineers. They must have a code of ethics they follow. You commented that it was human nature that they would be in favour of the higher price because they get a percentage of the total cost of the project and it's human nature to want to get that.

I couldn't help but think that if water systems are privatized in the province, would the same philosophy apply to the private sector operators, who would surely want to maximize their return on investment by selling more water to the ratepayers? Wouldn't they want to sell as much water as possible in order to pay back the investment they made in this facility and give a return to their shareholders? That's what they're there for. I'm wondering if the same kind of motivation and drive would be behind the private sector operators as would be behind what drives the engineers who work on these municipal projects.

Mr Malec: First of all, let me say that I love engineers. I love myself. I love my colleagues.

Mr Laughren: Too late now. You've done the damage now.

Mr Malec: I'm just saying that it's human nature, if you're in a business, to want to make — that's the only thing. Let me just say that personally, I don't care what water costs, you know what I mean? I flush the toilet

unnecessarily all the time. If I knew every flush cost me a buck or whatever, I wouldn't flush as much.

Mr Laughren: What if you were selling it?

Mr Malec: You're right. Someone in the business of selling water wants to sell more water. But at the other end of the spectrum, I think the consumer being aware of the cost would inherently tend to be more conservation-oriented. At least I would, because from my own personal experience, if I don't pay for it I don't care, but if it cost me a lot of money, I think I'd watch it.

Mr Galt: Thank you, Mr Malec, for a very interesting presentation, certainly different from what we've been hearing this morning, but we did hear some that started to approach it yesterday.

As to your comments about capital grants, the feeling of this government and the feeling I've had for a long time is that when we get up to 85% or 90% grants for a system, the responsibility on the local basis starts to slide away when they're paying such a small percentage and getting such a large plant.

That certainly came from the Who Does What commission, David Crombie, indicating that where plants have been built, the local municipal councillors were so successful in getting such a large plant that they couldn't then afford to run it and had to come back to get more money in grants to be able to operate the plant. That was the kind of thing that was going on and that we wanted to turn around.

You're absolutely right that chlorine and a lot of other things do not kill cryptosporidium; about the only way to get it out of drinking water is to filter it. I expect that if we went back a few years ago, it wasn't being diagnosed; we didn't recognize it and it was probably just referred to as one of the flu bugs we picked up. It isn't that long ago that we started to recognize it as a problem of the intestinal tract.

You comment at the bottom about the hard-hit municipalities: Those that now get 85% or 90% grants, the hamlets looking for water systems, we're certainly going to have to look at in a different way than Toronto or London or Kingston, just no question.

Your comments are very refreshing. As to the professional engineers getting 20% — I notice an engineer back there holding up his finger with the iron ring on it.

Mr Malec: I noticed. I saw it right away.

Mr Galt: We have the highest respect, but I have to wonder sometimes when I see — I think of schools as one example. Do we need that amount of money put into engineering and architects for buildings that are repeated over and over and over again? Yes, there are some unique situations, but the whole building doesn't have to be unique, with a special design. I think your comments there were right on the money.

The Chair: I thank you very much on behalf of the members of the committee for taking the time to come this morning and give your views.

1130

TORONTO ENVIRONMENTAL ALLIANCE

The Chair: I now call Janet May, from the Toronto Environmental Alliance. Welcome.

Ms Janet May: I didn't make copies of my presentation, and that is because I feel that since the government is forcing us to react to this bill, the government should be paying the cost of photocopying and not expecting non-profit groups to cover this cost.

The Chair: We'll be very happy to copy anything you'd like. That's done quite often.

Ms May: I was told by the clerk's office that I had to bring my own copies.

On behalf of the Toronto Environmental Alliance, I would like to recommend to this committee that Bill 107 be withdrawn.

First of all, I'm very concerned about how quickly and recklessly this government is changing Ontario. I have in the past often felt frustrated by how slowly governments address obvious inequalities in society, but we live in a democracy and democracies often are tedious.

In order for democracies to work, the people who will be affected by legislation must be consulted. I must say, we were only given two days' notification to submit our names before this committee and I don't think that is adequate notification. There are a lot of people out there who don't even know these hearings are taking place, and I really do think democracy should be giving people more time.

Democracies as well are not and should not be run as transnational corporations: by a board of directors that is accountable only to its shareholders, and where only a few reap all the rewards and everyone else is ignored. I think that is what this government is doing with 107, 103, 104 and all of the other bills that have been put forward.

Democracies are a form of government that seek to respond to the preferences of their citizens. This government seems to have skipped Canadian Politics 101. Last year this government passed Bill 26, which removed the requirement that the public must be consulted prior to the sale of municipal water and waste water facilities to private special interests.

Then the mega-week announcements profoundly changed the responsibilities of municipal governments without providing local councils with the money to fund these changes. Along with the radical and foolish upheaval of municipal government, the province has decimated the municipal assistance program, which gave municipalities grants for water and sewage projects. Now Bill 107 is about to be passed.

Although by itself Bill 107 appears merely to return control of water and waste water facilities to local governments, when viewed with previous legislation, it is actually a green light for cash-strapped municipalities to sell off water and sewage treatment plants to the highest bidder.

Although this government claims that 107 is unrelated to privatization of water or sewage facilities, it is very difficult to believe these claims for the following reasons:

(1) Bill 107 does not expressly prohibit the sale of publicly owned water and sewage services to the private sector.

(2) Bill 107 encourages public ownership of water and sewage through the requirement that any municipalities that have received a provincial capital grant for water and sewage facilities since 1978 must repay this grant prior to

selling out to the private sector. Has the government considered that this repayment will merely be added on to the selling price of water and waste water facilities and then passed on to consumers? And these consumers are, of course, you and I.

(3) Minister Sterling stated on October 17, 1996, to the Legislature of Ontario that the Ontario Clean Water Agency can better compete in the open market, which they are facing at the present time, if they are under a private structure than if they are under a public structure. Notwithstanding that, the whole goal is to get cleaner, less expensive water to the people of Ontario, and that can be done in a competitive atmosphere better than in a monopolistic atmosphere, which is presently the kind of situation we have in Ontario.

England and Wales are examples of a disastrous experiment with privatization. Privatization in these countries has led to a number of problems, including: water prices doubled between 1989 and 1993; more low-income families had water service cut off because they could not afford the increase in water prices; the number of times people had their water cut off increased from 480 to 21,282; water shortages; and finally, an increase in regulatory violations on the part of the water industry.

Given that this government has also introduced an environmental deregulation agenda, we can be sure that violations of water will occur in this province as well. When the Ontario Clean Water Agency was established in 1993, one of its mandates was water conservation. Selling off OCWA is likely to result in an end to water conservation programs, unless one counts cutting off people as a water conservation measure.

As we know, the main goal with the private sector is to increase profits by selling more of its products and services. What will happen to water conservation projects such as delivering free, low-flow toilets to residences and rain barrel programs when the private sector controls our water?

I believe that a rate structure which rewards those who use the most water with lower prices of water will be implemented once privatization comes along.

Bill 107 paves the way to put water in the hands of special-interest corporations, yet water is not a commodity we can either choose to consume or not. As far as I know, this government has not yet changed the dietary requirement of drinking eight glasses of water a day for optimum health. If, however, following privatization, we are dissatisfied with the quality of our water, the lack of service or its cost, we will not have the option of changing to another company, nor will we have the option of turning water corporation executives on to the street for failing to protect this necessity of life because they are not accountable to the public.

In a poll conducted last year, 76% of Ontarians stated that they support public control of water. A few weeks ago, Kathleen Cooper of the Canadian Environmental Law Association spoke to Citizens for Local Democracy at their Monday night meeting. That, of course, is another special-interest group of taxpaying voters. She spoke about 107. The outrage of the audience towards your plans to privatize our water and sewage treatment plants was matched only by their outrage towards Bill 103. The

public is appalled by your plans to sell off our water. To Ontarians, water is a right, not a privilege.

Bill 107 must be withdrawn. I am afraid that with its passage, all who live on the Great Lakes will soon be echoing the infamous words of the ancient mariner: "Water, water, everywhere. Nor any drop to drink." Thank you.

Ms Churley: Thank you very much for your presentation. I want to actually put something on the record briefly here.

Earlier, Mr Galt, the parliamentary assistant to the Minister of Environment, asked Mr John Jackson a question, specifically: "Why did the previous government," meaning the NDP government, "not bring in strong water quality and conservation regulations?" I think it was a good question, which perhaps should have been placed more to one of us. However, there's something very important that should have been done and we're hoping now that this government will.

But I want to point out that this government in fact has already gone in the opposite direction. They have cancelled MAP, the municipal assistance program, to help municipalities with their upgrading and expansions. And under OCWA there was a mandatory conservation policy: In order for a municipality to get money from OCWA to upgrade or expand, they had to work with OCWA to come up with a conservation plan or they couldn't get the money. In fact, in Barrie we have a perfect example: They wanted to expand because of Molson, and because they were forced to work with OCWA, millions of dollars and capacity were saved. This government has gotten rid of both these programs, plus the rural runoff program.

I just want to make that clear. Political cheap shots can be made, and are often made, around this table. I'm responding to that one by saying, yes, I wish we had acted even more, but this government has cancelled what was already there.

Ms May: Right, including RAP.

Ms Churley: Including RAP, the remedial action program for the Great Lakes. I don't have time to go into all the cancellations and deregulation around water, but there are several.

My question is, if this bill is not withdrawn, which is what we all want, I believe — those who are opposed — what is the most important amendment you can see which absolutely has to be passed?

Ms May: That privatization be expressly prohibited.

Mr O'Toole: Thank you for your presentation. I just wanted to make a parallel analogy, if I could. I'm trying to understand this. One aspect of your point of view is the price of water and the need to conserve water, even though it's, "Water, water, everywhere." The analogy I want to make is that Ontario Hydro is a public utility of a sort. Would you agree with that? This isn't a trick question. Is it publicly traded?

Ms May: Yes, although I think some of the salaries are more in line with the private sector, but yes.

Mr O'Toole: That's a good one. I never thought of that. How does OCWA phase out on that? But anyway, that's another one. They're on the list to read. There's about a page of them.

The point I'm trying to make is, it's a public utility. Do you think that Ontarians, or Canadians for that matter, are wise users of the commodity, of power?

Ms May: No, I would say not. There was an article —

Mr O'Toole: Well, does that make the argument that only a public generator, a not-for-profit, can have a conspicuous conservation policy? I wonder if the real contrary argument could be made: that only in a competitive market are true conservations of scarce resources applied.

Ms May: No, because —

Mr O'Toole: You don't believe that argument? I would challenge you.

Ms May: — there's no accountability.

Ms Churley: Wait for her to answer.

Mr O'Toole: I would ask you to think about that, because I believe without competition there's no conservation.

Ms May: I would disagree.

Mr O'Toole: You don't agree with that?

Ms May: No. Water is a right. We all have the right to water. Privatization will —

Mr O'Toole: Why do not public utilities use full cost accounting principles today?

Mr Laughren: You don't want to ask a question, you're just giving a speech.

The Chair: Mr O'Toole, please continue.

Ms May: Anyway, my answer is no. I don't think a competitive environment is the way in which we should be —

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Mr O'Toole: Do you think that full cost accounting principles should be used in our municipal utilities, that is, the cost of capital, the cost of labour, all the various costs, materials, operating, capital, all that stuff, should be part of the bill?

Ms May: Part of Bill 107?

Mr O'Toole: No, part of the bill you receive as a consumer.

Ms May: Oh, my water bill? No, not necessarily, because we need water to survive.

Mr O'Toole: Yes. So it's free, kind of.

Ms May: Exactly.

Mr O'Toole: I don't agree with you.

Mr Hoy: Thank you very much for your presentation. I also noted that you talked about conservation in your presentation. I can recall in a city that I live near, but do not live in, perhaps in August, utility commissioners would put over the radio or other means, in the press, a request that people not water their lawns in August, particularly if it's been extremely hot.

The response, as I understand it, has always been very good. They see this as their utility, their water source. If privatization were to come in and you have a responsibility to shareholders to show profits at the end of each fiscal period, would you be motivated to tell people to turn their sprinklers off, either in-ground or through a hose and moved around the yard? If you're motivated by profits, would you put out that notice through the press that you should not do that?

Ms May: No, I don't think so. I don't think it's likely, because of course shareholders would demand that more

of the product be consumed so that their profits would go up. It's like rain barrels too. I don't think it's likely that we'll see the companies that are bidding for water handing out free rain barrels to people so they'll use the rain that they've collected to water their lawns. No. There'll be an end to water conservation.

Mr Hoy: Thank you for your presentation.

The Chair: Thank you very much for coming before us this morning, Ms May. We appreciate your advice.

SAFE SEWAGE COMMITTEE

The Chair: Our final presenter this morning is Karey Shinn from the Safe Sewage Committee. Good morning and welcome.

Ms Karey Shinn: Good morning. The Safe Sewage Committee is a non-government organization. We were originally formed to bring public input into the main sewage treatment plant environmental assessment at Ashbridges Bay. We have toured many sewage treatment facilities in North America, attended water environment federation conferences and have membership in Japan, Britain and the United States. We know quite a bit about this and, I'm afraid, probably in some cases too much.

I would like to address three different areas of concern:

(1) The wording of this bill would lead a reasonable person to believe that a private company could buy a municipal water and sewage system for as little as the debt to OCWA and then be in the business of selling water.

(2) The need for a graduated water rate structuring, so that delivery of essential water requirements to any person in Ontario would not be threatened, nor hamper water conservation programs.

(3) The need for regulations, conditions, operation contract criteria and licensing that ensures that (a) the land that water and sewage utilities sit on remain in public ownership, subject to local land use bylaws, and this consists of mostly large waterfront and near-shore lake lots, and (b) all services are carried out under license or contracts meeting specified regulatory body requirements to ensure that quality water delivery and not foreign ownership or profits are the result of the bill.

(1) Does the bill go beyond the intent to transfer "service," the wording of the bill? Has the government investigated how the wording and language of this bill implies that what is being transferred is not just treatment works and delivery but the water itself?

Bill 107 is labelled the Municipal Water and Sewage Transfer Act. This clearly refers to the product in the system, and not the service or the pipes and infrastructure. If in fact the service is what is being transferred, a reasonable person would expect the act to be titled the Municipal Water Delivery and Sewage Treatment Services Act. Do you agree that the wording does not describe a service?

On page 14, subsection 9(2), the proposed act refers to collecting payment for services and includes in the options among "sewage service rates" etc the term "water rates." A reasonable person would think they were purchasing water.

The supply of water today is an essential service that is provided by a public utility. In Toronto, we receive a water and sewage bill. This amount is either a flat rate or metered amount calculated in cubic metres or litres. A reasonable person cannot tell that we are receiving water at no cost. In fact, we pay for the service at cost. This confusion has no consequence when everything is publicly owned and operated.

If, however, Bill 107 intends to transfer physical plants to municipalities but wants to introduce the concept of privatization of services, then payments cannot be made for water. If payments are made for water and sewage and service is not specified, what Bill 107 will have done is changed the nature of an essential service from an at-cost public utility to a commodity. Under this commodity outline, I think it would then fall under NAFTA and we would have our water shipped out. It only took 10 years to get rid of the Aral Sea in the Soviet Union. It was 24,000 square miles, which is roughly the size of Lake Superior. I think it's very, very clear we have to look at the wording of the bill.

Has the government investigated the implications of Bill 107 that would, in effect, turn into a commodity the water draining into and forming the Great Lakes, given that the water in the Great Lakes belongs to the federal jurisdiction under a number of charters and international agreements? Have you looked into this? Yes or no?

The commodity issue does not arise under the publicly owned system we have today, nor the USA situation where private companies are usually given a five-year contract provision to operate. Outright private ownership does not exist in the USA. Their setup is for contract operations/management.

In short, the wording of the bill would lead a reasonable person to believe that a private company could buy a municipal water and sewage system for as little as the debt to OCWA, and then be in the business of selling water. Will the government ensure that Bill 107 does not cause this to happen by default? If the intent is to retain public ownership and not turn water into a commodity, this must be both implicit and explicit in the wording of the bill.

The wording of the bill must be changed to more clearly describe the delivery of service, and not the water; in the case of the Great Lakes, a federally governed international resource carried by the service. This would not have been an issue in Britain, which is an island, nor Australia, which is a separate continent. Neither of these countries have a situation where the majority of their population receives water from a jointly controlled international and interior freshwater lake system.

(2) Water delivery and sewage service rates need to address the kinds of problems created by private systems that have led to people suffering from no water, as was the case here as well in Toronto at the turn of the century before we had a public utility.

We recommend that a rate structure that never threatens the minimum amount of water that a person or persons require at any given billing address is always established, so water used beyond a fixed or essential amount at a flat rate would be subject to increases that were greater and related to the amount of water used.

This staged approach would prohibit shutting people off from essential water needs, while at the same time encouraging water conservation.

One of the problems we face in the city of Toronto, probably one of the largest flat rate remaining systems we have, is that it does not take into account the number of people who live in a house or how much water they put on their lawn. It is not mandatory to get a water meter, and this makes water conservation very difficult to implement. With no measurement of exact usage, there is also no way to measure what has been conserved and what capacity we could avoid in costly upgrades to treatment plants and ensure that charges are equitable. In order to improve the present situation, mandatory metering is essential to any service provider, and a fair, equitable and effective payment rate system used to ensure no one will be cut off from essential services.

1150

(3) I do not want to leave you with the impression that we in Metropolitan Toronto are impressed with the current quality of our sewage treatment plant effluent and therefore the continued degradation of the source of our drinking water, Lake Ontario. The Ashbridges Bay sewage plant in Toronto's eastern Beaches has achieved the status of a Great Lakes hot spot by meeting government regulations. Expansion continues to be a priority over effluent quality, and this is not acceptable. Although health studies continue to demonstrate the incidence of respiratory disease, heart disease and, in newer reports, childhood cancer, this plant continues to incinerate sludges, up to 40,000 dry tonnes a year, the equivalent of about 22,000 Canadian automobiles in carbon dioxide alone.

If the government could mandate an end to this huge source of air pollution and high carbon- and nitrogen-based emissions in Ontario, it could be the case we begin to meet our carbon dioxide reduction objectives as well as cause our sludges to meet beneficial use criteria: for use on mine tailings, golf courses — they use it in Disneyland in the US — and other useful nutrient programs. This would also free up equally huge amounts of natural gas generated in sewage operations for energy, rather than being wasted to incineration, the equivalent of attempting to burn mud.

Because the current system and regulatory framework are not producing functional improvement to near-shore environments at treatment plant sites, it is very important that regulations, licensing and operation contracts come under the scrutiny of a regulatory body that will enforce improving standards and undertake monitoring and enforcement.

If a private interest were to become a manager-operator of a drinking water or sewage treatment plant, what would be spelled out in the licence or operations contract that ensures that money goes back into the service and is not redirected out of the system or hurt the Ontario economy by sending profits out of the country or just simply out of the tax base?

We tried to look for models, things that we could sort of see where maybe this is working somewhere. The model our committee has favoured is the setup used by the Northwest Biosolids Association. This association

began as a co-op with 120 municipalities and waste water industries working in conjunction with the University of Washington State and the department of forestry at the University of British Columbia. They are capable of putting together projects and improvements for both municipal and private companies. They hold an annual conference in the fall to exchange ideas and run a library and Web site to document project successes, failures and new developments in the industry as a whole.

I think if municipalities are going to be acquiring sewage plants, there must be some sort of an annual event or something that offers everybody operating these plants the chance to see new technologies, to be involved with engineers who are out in the field and not just from the local areas in Canada, because in many cases we've found that Canada has locked out even its own home-grown technologies here in Ontario. I there reference Trojan for ultraviolet disinfection and Zenon for their fibremembrane processes. I don't know why. These people are producing drinking water out of sewage. I think we want this.

For a small to mid-sized municipality, it's difficult to afford expertise to understand the alternatives that are available for their needs. Transferring ownership to a municipality is no guarantee of improving anything. The important factor is knowing how to get treatment facilities to operate so that effluent is not going to generate pollution hot spots and sludges will be clean enough to recycle nutrients. It is important that municipalities have high expectations and understand how to get their systems to perform well, be capable of monitoring and enforcing sewer use bylaws designed to protect the entire service area, including the host community for the sewage treatment plant processes. A municipality must be able to recognize good management, and the operations contracts or licensed operators must be held to performance standards and system improvements.

The introduction of many new technologies would also promote new sector jobs and provide large jumps in the advancement of water quality and source control protocol to ensure sludges continue to meet stringent land application guidelines.

When the Safe Sewage Committee was founded six years ago, Metro had no water conservation program, nor did the city of Toronto. Metro Hall and the domed stadium were both built without water conservation standards for new toilets and fixtures. With the city of Waterloo pioneering water conservation and the Rocky Mountain Institute setting an early standard, we are learning that in many cases expansions of drinking water and sewage treatment plants can be avoided. There are Ontario companies capable of producing near drinking water from sewage and disinfection without toxic chemicals. We need this.

The time is right to improve water and sewage treatment. The challenge is to create a situation that can make this part of the process, and have a regulatory body in place that ensures this will happen.

The Chair: Thank you very much. We have just over a minute remaining for each caucus and we'll begin with Mr Maves from the government caucus.

Mr Maves: There are some new and interesting things in your presentation and I appreciate that.

On page 4, one of your paragraphs: "For a small to mid-sized municipality it is difficult to afford expertise to understand the alternatives that are available for their needs." It seems to be a misconception. The bill does not end any operations agreements that these small municipalities have with OCWA. OCWA runs and operates a lot of these plants and that doesn't necessarily change through this bill.

Ms Shinn: It would only change if they were offered a better deal by somebody else. If somebody was willing to pay off —

Mr Maves: Right.

Ms Shinn: I'm just saying they may not know what their options are.

Mr Maves: The other thing, on page 2 you talked about: "Outright private ownership does not exist in the USA. Their setup is for contract operations/management." Then you said, later on: "A municipality must be able to recognize good management and the operations contracts or licensed operators must be held to performance standards and system improvements." How do they do that in the United States in those places where they have contract operations/management?

Ms Shinn: The Environmental Protection Agency in the US sets the standards for water and sewage treatment plants throughout the country. They have regulation 503 in place for their sludges and they have different types of Clean Water Act agreements and whatever for the effluent discharges. It's very different from here but I was very interested to read that. This is in some of the latest literature that's coming out. As members of WEF we read these things.

The longest contract they have is for five years and if they're not going to cut it with water quality in that they're going to have them out there. The problem they've had with the five-year contracts in terms of these new operators is that over a five-year period if they have to put in centrifuges and digesters and everything else, it costs a lot of money and the amortization period is a problem. However, I think Wheelabrator is the largest private operator. They're almost getting out of equipment into operation — not ownership, operation. They are looking at a maximum of 15-year contracts. Again, it's not ownership; it is operation/management.

The problem I have with this bill is it is not clear that that is what the issue at hand may be. I think we have to separate this idea that the water is part of this ownership, because it is not. If that is ever going to be discussed, it would have to be done through joint federal agreement, so I think that's not clear. But in the States it is not the water, it is not the ownership of those utilities; it is simply the management and operation.

Mr Hoy: Thank you very much for your presentation. Your concern about water falling under the description of a commodity and its relationship to NAFTA is probably worth investigating. I think most Ontarians believe that the Americans would like to tap into our water sources. I know some years ago it was a great item of discussion. California is one of the states. It has an abundance of many things — people, climate, land — but they're not overly blessed with water. There was talk that even they

were interested in water from our area. I take note of your warning here.

Ms Shinn: If you have a private company that has water as a commodity in Canada and they have customers in the American Midwest, it would take less than 10 years to drain Lake Superior, and I don't doubt for a minute that because we get all these floods of rain, if you put that kind of volume of water up in the air, which is what they've done by draining the Aral Sea, 24,000 square miles — no one imagined it would go — it is recycling in the environment. It's a very dangerous precedent to set, and I think the wording of this bill has really created a big grey area. So I take your point. I think it's very serious to look at the wording of this bill.

Ms Churley: Thank you, Ms Shinn. Your knowledge and expertise continue to astound me. Thank you for coming forward with this today.

By the way, I forgot to mention earlier, for the record, that the Harris government also cancelled the green communities programs which helped communities learn how to conserve water and energy.

Closer to home, in the east end, Ashbridges Bay, what's happening with that right now? I'm not clear what you're saying within your presentation. How do you see the connection between this bill and what is going on and your long, long struggle against the expansion of Ashbridges Bay plus the burning of the sludge? How is there a connection there?

Ms Shinn: To a great extent the Metro facility is overbuilt, but it's producing underquality product. We really need to have a better regulatory body in place that actually looks at receiving water quality and monitors on a regular basis. If you can achieve a Great Lakes hot spot by meeting the regulations, it's not very good.

I think we were all upset that the MISA program had been terminated at the time that the waste water treatment plants were actually going to be looked at as sources of contaminants, because that, for the first time, would have provided a way to work back through the system to identify certain particular pollutants.

Our water and sewage plants have been built over history by civil engineers. In the 1970s water pollution changed to chemistry. The number of chemicals in the system are just astronomical, yet we still have civil engineers shifting, pouring concrete and dumping it further out in the lake, so we've got to look at the chemistry of water now and I think this has to be done through introducing new technologies.

We could run our own metropolitan systems a whole lot better if in fact there was a better process for certificates of approval. Instead of just getting a rubber stamp on putting in a new one of those old things, people would have to look at new technologies.

So there's a whole bunch of ways of looking at what we've got now and improving it without becoming a big cost and something you'd want to sell off because somebody else might know what to do. You might not want their technologies. If you sign a long contract, it might be an extinct technology before it's even paid for.

The Chair: Ms Shinn, thank you very much for taking the time to come to the committee this morning. I think we all enjoyed your presentation.

Colleagues, that's the last presenter for this morning. We adjourn and we'll reconvene at 1:30 this afternoon.

The committee recessed from 1201 to 1336.

CANADIAN UNION OF PUBLIC EMPLOYEES ONTARIO

The Chair: The resources development committee will come to order for this afternoon's proceedings. Our first presenter is Mr Ryan from the Canadian Union of Public Employees. Welcome.

Mr Sid Ryan: Joining me today are Alison Davidson, a researcher from our national union in Ottawa, and Peter Leiss, the chairperson of our environmental committee. I'm Sid Ryan, president of CUPE Ontario.

I'm happy to have the opportunity to address the committee on such an important bill. It has not to date received nearly the attention that has been given to Bills 103 and 104; however, the detrimental impact of Bill 107 is no less severe.

Like these other proposed pieces of legislation, Bill 107 demonstrates the government's continued willingness to abrogate from its responsibilities. Ensuring good quality public services that are accountable and accessible to the public in all areas of the province should be the primary concern of this government. Bill 107 continues the pattern of withdrawing provincial support for water and waste water treatment that began with the cancellation announcement of the municipal unconditional grants program, which helped to defray the costs of water and sewage treatment facilities.

What is at stake is the quality and cost of water services, the health of our citizens and the quality of our environment throughout Ontario. Water is an essential element in Canada's intricate web of life and not a commodity for corporate greed.

CUPE represents thousands of employees in the water industry throughout Ontario. Our members work as technical and clerical workers in dozens of water and sewage treatment plants throughout Ontario. As workers, we fear the loss of our jobs as a result of privatization. As ratepayers, we fear the increased costs of water and the decreased quality resulting from privatization.

The proposed act will transfer all ownership and financial responsibility of water and sewage facilities in Ontario from the provincial to the municipal level of government. At present 25%, or 230, predominantly small and medium-sized facilities are serviced by the Ontario Clean Water Agency. Once this transfer happens, municipalities will have full responsibility for the construction, operation and maintenance of all water treatment and sewage treatment plants in Ontario.

In the context of other downloading by the province, Bill 107 encourages the privatization of OCWA-serviced water and sewage treatment systems and municipally owned and operated facilities. There will be great pressure on the municipality to either privatize water and sewage treatment services or to raise water and sewage rates.

As a result of Bill 26, the omnibus bill, which eliminated the requirement for a plebiscite before the government could sell a utility, water has become a Canadian

commodity to be bought or sold. In this government's desire to appease business, the interests of the communities become secondary to that of corporate profit.

Privatizing water becomes particularly acute in the era of NAFTA. If water is diverted and sold to the US, a precedent will be established which ensures the continued export of water and perhaps an escalation in that trade. This event is far more likely if water delivery and treatment facilities near the US-Canada border are privatized. Bill 107 encourages this privatization and hence the threatened drainage of this natural essential resource so as to make a profit.

As we speak, there are large water and waste water corporations and consortia actively looking to design, build and operate water and waste water facilities in Canada. Many of these huge multinationals see our largest natural renewable resource as their fountain of profit. The largest are the French-based corporations Lyonnaise des Eaux and Générale des Eaux. These are followed by the British companies, the largest of which is United Utilities, the subsidiary of which is Northwest Water. Northwest Water and Consumers Gas just received the contract to build and operate the newly proposed water treatment and delivery system in York region.

There will be no competition if the water industry is privatized, because it will be dominated by huge, powerful monopolies. A recent French audit criticized the insufficient competition in the French water industry because of the dominance by two huge companies which has resulted in the price of water rising by almost 50% in less than four years.

In the UK and other parts of Europe where profit-making corporations took control of water services the disastrous results included: increases in water prices well beyond the rate of inflation; termination of water services to thousands of low-income families; outbreaks of dysentery and hepatitis A caused by poor sanitation and unavailability of water; failure to reinvest profit into the aging infrastructure, resulting in water shortages; selling off of reservoir lands for development purposes; laying off thousands of workers and lowering wages while dividends to investors and executive salaries increased dramatically; and political corruption, illustrated by the conviction of executives of both Lyonnaise and Générale des Eaux.

An April 1996 poll conducted for the Ontario Municipal Water Association by Insight Canada Research found that Ontario residents strongly oppose water privatization. Specifically, the poll found that 76% of Ontarians favour water utilities being controlled by municipal officials compared with only 19% who favour private sector control.

Both Thunder Bay and Ottawa-Carleton have rejected aggressive sales attempts by water operations and management companies such as Philip Environmental. The management and operation of the Hamilton-Wentworth water and sewage treatment facility by Philip Environmental illustrates the fiscal disadvantages of private sector involvement in water services. On two occasions since 1995, when the region devised ways to cut the cost of the service to the ratepayers, Philip immediately claimed the savings for itself. Potential losses to the region from the

ensuing disputes will more than offset any potential savings from having Philip manage the utility.

In January 1996 in Hamilton-Wentworth, an accident in the plant resulted in the worst disaster in the region's history. It occurred when 180 million litres of raw sewage were released into the harbour and surrounding areas. More than 70 houses and businesses were flooded. The region was entirely responsible for damages and Philip was let off the hook.

If this bill passes, the province will no longer be responsible for enforcement of sections 76 to 79 of the Environmental Protection Act as they relate to water and sewage systems. The result is a fox-in-the-henhouse scenario, where municipalities will monitor and enforce their own programs and services. Bill 107 makes no provision for an independent public regulator to safeguard against profiteering. In the UK, when water services were privatized, a public sector agency was established.

If municipal water and sewage treatment facilities become privatized, we demand that the government institute provisions so that the job security of CUPE workers be protected. We also demand that the health and safety of CUPE workers are protected in the event of corporate intrusion.

We endorse all the recommendations put forth by the Canadian Environmental Law Association in its submission, in particular that the Ontario government should immediately withdraw Bill 107 unless it is substantially amended.

If Bill 107 proceeds, it must be amended to include an express prohibition against the privatization of water and sewage facilities, and if this does not happen, any proposal to privatize must be subjected to full cost accounting as to the consequences of privatization; restrictions on proposals to sell, transfer or otherwise dispose of municipally owned lands used for water or sewage works; provisions establishing an effective, efficient and independent regulator of water and sewage undertakings in Ontario; and the restoration of the previous statutory requirement for electoral assent to proposals to dissolve or create utilities.

Mr Hoy: Thank you very much for your presentation. You are speaking today in regard to Bill 107 about the quality of water, ratepayer costs in the future and impacts on jobs. The government would suggest that privatization is not the main aim of this bill. With the downloading, which, I'm sure you're aware of to municipalities that is going on currently, such as social programs and other programs, and the lack of a requirement for a referendum within the local municipality to divest itself of water or sewage treatment plants, do you see Bill 107 as not opening the door to privatization?

Ms Alison Davidson: If the purpose of the bill was to prohibit privatization, there are no provisions in the bill which prohibit privatization. This is one of the demands put forth by CELA and endorsed by us as well, that yes, privatization is the reason why this bill is coming forward.

Mr Hoy: Earlier in the day a presenter mentioned Northwest Water. With the rotation we have here on questions, I didn't have the opportunity to ask, but do

you have any information as to their performance in Britain?

Mr Ryan: I was in Great Britain a little over 18 months ago, around the Christmas period, and I witnessed first hand massive water shortages in Great Britain. The CEO of Northwest appeared on television with a glass of water, like this, lecturing to the citizens of Great Britain that in his opinion they were wasting water and they should be able to bathe with a glass of water. He said he was doing it on a monthly basis; this is how much water he used. He and his wife used a glass of water to bathe on a monthly basis.

We saw water trucks rolling down the streets where they had water shortages, the water mains had burst, where the private sector had not invested the amount of dollars they said they would into upgrading the water systems in Great Britain.

The newspapers were absolutely chock-a-block full of stories about CEOs ripping off the public, making massive profits. We had people, of course low-income families, being cut off the water because they were unable to afford the increases in water rates.

This is the type of system I think we're heading towards if the Tories get away with privatizing the water treatment systems and sewage treatment systems in this country.

Ms Churley: Thank you very much, Mr Ryan, for your presentation. It reflected what we've heard over the course of the morning and yesterday in general. I'm particularly worried, however, about the section on NAFTA. We've been hearing more and more about water quantity along with quality. For the first time people are starting to become aware that we've got a water quantity problem here too, which is very worrisome. Can you elaborate on the implications of this? You just mentioned it very briefly.

Ms Davidson: I'll start; maybe Sid wants to add. If water is diverted to the United States, it will be very hard for us to get it back. As Ontarians and Canadians we have to look at ourselves as stewards for some of the last remaining natural fresh water. Water is contained under the tariff schedule in NAFTA. It's possible it will be diverted, and we cannot get it back in that case. We can imagine a scenario where the United States is getting our water, at our expense, when we're experiencing a drought. Who knows what the future holds? It would be difficult for us to keep that water here if it's privatized by these large multinationals.

Ms Churley: What you're saying is, as long as we don't privatize it, then it doesn't come under NAFTA? I don't know a lot about this, but you're saying that in itself could make the difference: If it's in public hands, it's harder for them to do or impossible for the Americans to get it.

1350

Ms Davidson: That's my understanding. It would be less likely for a publicly held utility to go to the United States than a privately held company, especially when that private company already has holdings in the United States, like many of these multinationals do. They will be looking for more profit and it will mean diverting our resources to the United States.

Mr Galt: Thank you for the presentation, a most interesting one. I'd just like to make reference to a few of the points you were speaking on. One relates to York region. In fact, the municipality is in control, is looking after, will be there. It's a build, operate, transfer to the municipality. It is not privatization like you're referring to in Great Britain.

In reference to the Hamilton one, certainly pumps did fail on occasion there. I'm pleased to report the Ministry of Environment inspectors were on the job monitoring and things were properly looked after.

As we talk about exporting water and all that kind of thing, what's really going on here is that we're talking about the transfer of property and waterworks to municipalities. We're not talking about the water, we're not talking about other things; we're talking about that being moved to the municipality.

There was a reference made to a plebiscite in Bill 26. That related to PUCs, and most waterworks are separate from PUCs. Granted, there are some that are connected, but have a look at the privatization that's occurred so far. There's been no limit to stop municipalities from privatizing in the past. It has not been happening, and with this bill we're rolling in the requirement that they have to pay back the subsidy or grant to the provincial government, which is a very definite disincentive to privatization.

I was interested in your comments as you talked about it being transferred, and realizing that OPSEU is the union that works with OCWA, and CUPE with the municipalities generally, as I understand it, I almost got the feeling that you were concerned about having these works transferred to the municipalities. I would think you would be quite supportive of that with your union involved in those various municipalities.

Mr Ryan: You had a lot of statements there and not too many questions, but let me just go back to your first statement around the York region. You said that BOT — build, operate and transfer — is not privatization. I would put it to you, sir, that BOT is the worst form, the most odious form of privatization, because what you get is the worst of all scenarios, where you have the taxpayers pay for the building and pay for the operation but the private sector takes the profit out of the water utility, and then at a time when it's in a state of disrepair 20 years down the road, guess what the private sector wants to do? Transfer it back into the hands of the public sector, back into the municipality.

We end up getting caught twice. First off, the private sector takes the profit out of the building for the first 20 years, and then when it's badly in need of repair, you transfer it back into the public sector so the taxpayers once again have to pick up the cost of repairs. It's the most odious form of privatization.

I know a lot about the environmental damage that happened down in Hamilton. Just because the environmental department was sitting around watching what happened in the harbour in Hamilton-Wentworth does not take away from the environmental damage that occurred and from the 70,000 tons of sludge that was pumped out into the harbour as the result of the inefficient operation by the private sector of that plant. I fail to see the point you're trying to make. Just because it will happen to be

monitored doesn't absolve the private sector utility of the responsibility for repair.

By the way, they didn't pick up one single penny of the repairs. It was paid for and the cleanup was paid for by the taxpayers of Hamilton-Wentworth, once again an example of where the private sector is abdicating its responsibilities, taking the profit out of the system but refusing to clean up the mess they leave behind.

The Chair: Our time has expired. Mr Ryan, thank you very much for taking the time to come before us today and present your views.

TORONTO BOARD OF EDUCATION PARENTS' ENVIRONMENTAL ACTION GROUP

The Chair: Our next presenters this afternoon are Elise Houghton and Lyn Adamson from the Parents' Environmental Action Group. Welcome.

Ms Elise Houghton: Good afternoon, Madam Chair and members of the committee. I'm Elise Houghton and this is Lyn Adamson. We are parents representing the Toronto Board of Education Parents' Environmental Action Group. Our group has been active at the Toronto board since 1992 and our mandate is to make environmental awareness, protection and action an integral part of public education. We like to think that some day all the kids in school will understand how their water systems work, but I think we're still a long way from that.

We'd like to thank the committee for this opportunity to speak about the proposed legislation outlined in Bill 107, a bill variously entitled the Municipal Water and Sewage Transfer Act and, perhaps as an afterthought, the Water and Sewage Services Improvement Act, which second title is included at the head of every page. A careful reading of this bill by a layperson unversed in legal subtleties does not reveal in what way it is intended to improve our water or sewage services. This was my impression on reading this bill very slowly. On the contrary, speaking as parents concerned about both children and the environment, we are of the opinion that should this bill be passed into law, it seems very unlikely that water and sewage services in Ontario would improve as a result.

Water is one of our most precious resources in Ontario and clean, safe drinking water is one of the most vital elements of a healthy and prosperous society. It is a resource we expect to see governments safeguard and conserve in the interests of the public good, taking all appropriate measures to promote conservation and environmental protection. As residents of the Great Lakes basin, which is now home to more than 30 million people, we are concerned that the provincial government of Ontario has not chosen to take measures to improve the quality of our drinking water.

Before proposing the present legislation, this government has:

First of all, amended and repealed environmental laws, regulations and policies which affect virtually every aspect of environmental protection in this province, as well as natural resource management.

The government has cut budgets and staff in both the Ministry of Natural Resources and the Ministry of Environment and Energy, resulting in a dramatic reduction in the capacity to monitor and enforce the laws which remain, including those which affect water quality.

The government has proposed to cancel funding for local advisory bodies developing cleanup plans for pollution hotspots in Lake Ontario, from where we get our drinking water.

Now the provincial government proposes transferring the ownership of water and sewage treatment plants to municipalities, along with many other services which we've seen and heard a lot about in the last two months, which we believe will put a very severe burden on our property tax base. We understand that this government has virtually eliminated the municipal assistance program, which provided capital grants for municipal water and sewage projects.

It would therefore appear to us as citizens that municipalities will have three choices if this legislation passes. The first is to significantly increase property taxes to provide sufficient funding for the many services which are about to be downloaded on us, including the maintenance and staffing of our waterworks. A second choice might be to have to make a choice between hard, or infrastructure-based, services and the soft social services which we already see decreasing, which we imagine would be to the probable detriment of Ontario's needy. The third choice would be the selling off of water and sewage infrastructure to private interests to maintain enough funding to fund all the other services municipalities are about to be faced with.

It's worth mentioning here that in 1996 an Insight Canada poll, which you've probably already heard about, indicated that 76% of Ontarians favour public ownership of waterworks. It struck me that this was a familiar figure, since 76% of Metro voters also seemed to oppose a megacity. But we also noticed that large majorities of public opinion don't seem to have too much influence on this government, which forces us to practise public speaking. We would like to remind the members of this committee that members of the public do understand these issues, although we may not be as expert as many of you, and we believe the public opinion you continue to hear is very clear.

There are a few points we would like to pick out with reference to Bill 107. The first one is that we believe that water is a public good and should remain under public ownership. We have noted with grave concern the results of the sale of water and sewage works by the Conservative government in England. Previous speakers have given you more details than we have on this subject, but I will repeat them anyway.

1400

We heard that water rates in England in some areas went up as much as 400%. We have heard that families who could not afford these increased water rates were disconnected from water, and apparently at the beginning of this change there were over 21,000 families which were disconnected, which is horrifying. We learned that people who cut back on their water use to very major scrimping led to a lack of basic hygiene resulting in outbreaks of dysentery and hepatitis A.

We heard that water reservoir lands, which were preserved to protect the water quality, were sold off to developers. We have learned that reinvestment of water revenues into infrastructure maintenance decreased, resulting in increased leakage and deteriorating facilities. We heard that water pollution offences increased.

We've also heard that, following the pattern of multinational corporations, there were extensive staff layoffs and salary cuts and that the profits from the now high-priced water revenues went to paying very high executive salaries and shareholder dividends at the public expense.

I understand that Bill 107 says it is not intended to privatize our water system, but when you look at everything else that's going on these days, it would appear that is very likely to be the only choice.

To avoid this scenario in Ontario, we believe Bill 107 should specifically include a prohibition against the privatization of water and sewage delivery in Ontario.

Next, it would appear that this government is transferring ownership of water and sewage treatment facilities to financially burdened municipalities at a time when new concerns are arising with respect to public water supplies. Two were mentioned in the paper yesterday if you read the *Globe*.

The first one was that, in 1996, 3,000 people on south Vancouver Island were infected with toxoplasmosis parasite. This is a parasite which can cause birth defects. These people were contaminated from the municipal water supply.

The second item is that, in 1993, 400,000 people in Milwaukee were infected and at least 100 people died when the city's water supply was infected with cryptosporidia parasites. If you read this, you'll know that this was only noticed by someone who became aware of the depletion of products for intestinal conditions, not the government.

In 1996, the city of Collingwood, Ontario, experienced a major outbreak of cryptosporidia as well. We now know that these, like many other interesting and new bacteria that are arising as a result of our not terribly environmental control of disease, are things that possibly threaten us. I don't know enough about the filters in existing Ontario infrastructure — apparently these kinds of things can be repaired with filters — but this will become a money problem.

It is essential that our water systems be regularly monitored by competent staff and that the kinds of filtration be installed which can safeguard populations against new strains of infection. Bill 107 does not provide for an independent regulator of water or sewage works; nor does it propose to set and enforce provincial drinking water standards.

We believe it is essential, particularly in the case where Ontario municipalities may be obliged to sell waterworks to private interests, that the government maintain an independent regulator of water and sewage standards for all providers and that they draft and enforce a clear set of standards to ensure that Ontario's drinking water remains safe and clean. It would seem appropriate to define by law the responsibilities that accompany ownership of public or private water treatment services.

Another concern in relation to allowing privatization of our water services is the possibility of free trade implica-

tions becoming relevant, along with foreign ownership of our water infrastructure. I understand that under NAFTA a foreign corporation, once given the right to divert or export Ontario's water to US markets, could claim under this agreement the requirement to continue doing so even if water shortages were to occur in Canada.

With signs of global climate change upon us, it is possible that the southern US and Mexico may experience water shortages. It may be possible that we also could experience water shortages. It is therefore essential that the government retain control over policy setting with regard to export of our water supply, should foreign interests be given control over our infrastructure.

With respect to environmental concerns, water conservation is another policy which should be entrenched within legislation regarding the future of our water supply. Water conservation makes sense both environmentally and economically and programs which promote decreased water consumption would benefit municipalities whose water and sewage infrastructures are already working to capacity.

As parents, we are concerned about the failure of this legislation to specifically address the need for water quality standards, for the provincial government's leaving water quality monitoring to uncertain authorities now and in the future, as our children become citizens under this kind of regime. As residents, we're concerned about the likelihood of the privatization of our water supply, increased costs which would benefit only the few and greatly increase hardship for the poor. As people concerned about the national environment, we're concerned that this legislation does not address the need to conserve water, does not provide for guaranteed water monitoring and does not include full cost accounting, which means all the results of all of the changes that would be made to both humans and the environment, in any plans to privatize our water and sewage infrastructure.

We therefore believe this bill should be withdrawn or carefully amended to ensure the public good is ensured by all of the above considerations.

Mr Laughren: Thank you for your presentation. You indicated that you were looking for improvements in the way this act would improve the water quality in the province. We haven't been able to find anything either. In keeping with that, I wondered if you knew, and my colleague's been reminding deputations of this, that this government is also planning to get rid of the requirement for zero discharge of chlorine from the pulp and paper sector into our waters of this province too. We're very worried that this is part of a bigger agenda to allow the private sector to have its way with our environment in ways they haven't been able to for a while. Do you see any other examples of this?

Ms Houghton: Any particular examples of water quality not being protected?

Mr Laughren: Yes.

Ms Houghton: Yes, I was aware of the reversal of the zero discharge rule. I haven't brought any information with me so I can't cite very many specific —

Interjections.

Ms Houghton: I have a list which I could give you, if you like, of cuts that have been made to various parts of

Ontario legislation by this government to reverse irritants to industry and to encourage industry to be self-monitoring, self-regulating; as far as I know, there are no examples of success with this happening. Obviously all of these industries are discharging into our drinking supply, those around the Great Lakes.

Mr Galt: Thank you for the presentation. Just a few comments in connection with keeping it public: Certainly we agree with that. We want to keep it public, closest to the people, and that's in municipal government. The bill is about clarifying the roles and the role as it has been. MOEE will be the regulator. Certificates of approval are there for each and every plant and will continue that way.

We've looked at the British system. We too agree that is not the route to go. They had a disastrous infrastructure system when they privatized in 1986, along with an \$8.5-billion debt just for their water system, and that's certainly not the case of where we're at today. We're simply wanting to clarify the roles and ensure that the 230 plants, or 25%, that are not owned by municipalities will join the 75% that already are.

You made reference to toxoplasmosis and that was of interest to me, a parasite — not a bacteria — that I don't associate with water. It's carried more by rodents and spread by rodents. It does cause abortion in several species of animals and there was a very emotional article in one of the women's journals about 15 years ago about what it could do to your child in very rare circumstances. Shortly thereafter there was a massive wipeout of cats; they were euthenized all across Ontario because of the rather emotional article.

The parasites that we're more concerned about in water are giardia, or beaver fever, and cryptosporidium. Cryptosporidium has risen its ugly head in recent years more because of ability to diagnose it and isolate and identify the cyst. It's probably always been around and probably in the past we referred to it as a flu and didn't know what we had. Now we're able to diagnose it and it's quite different. Anyway, thank you very much for your comments.

Mr Hoy: Thank you very much for your presentation. Whether the circumstances some time ago, as mentioned by the parliamentary assistant, were emotional, none the less it caused a lot of concern among people, I'm quite sure, and I'm sure if standards or the lack of standards created a situation where water was believed to be unsafe, it would be emotional, yes, but also heartfelt and would probably bring about a lot of strife throughout the people of Ontario.

You cited that you were concerned about the lack of standards. I think you talked about the reduction of staff at MOEE offices. It's my understanding that Parry Sound, Gravenhurst and Pembroke don't have any MOEE offices; commonly known as cottage country. Your concerns I would assume are for your children and yourselves as a parents' group. They're well taken by me and I appreciate your comments today.

The Chair: Thank you very much on behalf of the committee members. We appreciate your taking the time to come today. Thank you.

Our next presenter is Lin Grist. No? Eleanor Dudar. Is John Birnbaum here or Annaliese Grieve?

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TONY FORMO

The Chair: Mr Formo? Always we have a saviour today. We'll move down then to the 2:45 spot, Mr Formo, and we'll come back to those others shortly. Welcome. We're glad not only that you're here, but that you're here early. Please begin.

Mr Tony Formo: Bill 107, the water and sewage alleged improvement act: a deputation to the government of Ontario standing committee on resources development. You're sitting, not standing. Filibusters could be extended by attempts to rename governmental entities with such obscenely inappropriate titles as calling what you seem to be doing "resources development."

Improvement for whom? That question applies to legislative misnomers the political machinery has applied to what it wants to do water and sewage, municipal governments, public education, public libraries, public health care, public policing, public television and many other public costs that can be expected to skyrocket as public resources are privatized at bargain prices to friends of the political machinery.

It's not yours to give away. Turning water and sewage over to multinational corporations investing megabucks in a tax-subsidized purchase of political influence would be likely to drive up the cost of living for local citizens to the benefit of interests opposed to both democracy and free enterprise.

Allowing corporate greedheads to operate water and sewage services at the same time as being able to profit from the pharmaceutical industry or privatized health care involves some very serious conflicts of interest. If interests who control public water can profit from ill health, what are you going to do? Keep an eye on them at party fund-raisers?

My name is Tony Formo. I came to Toronto from the United States in 1968 to protest the war in Vietnam and military conscription. A few years later, John Sewell and community groups made an issue of political hacks pimping for developers running city hall, but a decade or so later community groups got tired out and I've had a vague impression that developers, and whatever other interests might be associated with political machinery, have been running things ever since — with more difficulty recently.

Another aspect of my political education in my adopted country is that after doing graduate work at U of T, I worked as a research officer at Queen's Park. I came to understand that how the government of Ontario worked was that when good suggestions got to the political machinery, they'd get zapped, regardless of potential cost savings, social equity or other public benefits. The Big Blue political machinery wasn't just the politicians. The deputy ministers and other upper bureaucrats were political appointees and there to rewrite reports and recommendations and otherwise evade public accountability.

Rather than being an institution that existed to benefit the public by minimizing living costs for everybody, the government of Ontario, as I experienced it, was into using the powers of government to selectively reward

buddies of the political machinery with contracts for advertising and consultants, pouring concrete and a slew of other scams.

This is my first spoken deputation to the government of Ontario, although I submitted a written deputation on Bill 103. From what I remember of standards of effective communications in the government of Ontario, literature reviews used to have some respect so I'll give that a try.

A literature review of the sorts of scams involved in corrupt governments operated by political machinery to public detriment might start with *The Spoils of Power: The Politics of Patronage* by Jeffrey Simpson, which is a historical survey of federal and provincial governments in the great white north since colonial imperialists did their takeover from native persons. It's a rather tedious read with similar story lines repeated over and over again with lots of unfamiliar names. The basic story line is that governments around here have been invariably corrupt, and they periodically change figureheads and political parties in ways that the rascals get thrown out of office and into well-paid jobs in the private sector or elsewhere in the political machinery and another batch of flack-catchers sponsored by the same interests take office and continue the same policies.

Other suggested readings include *A Portrait of Canada* by June Callwood; *the Corporate Welfare Bums* by David Lewis; *On the Take* by Stevie Cameron; *Friends in High Places* by Claire Hoy; *Shooting the Hippo and Behind Closed Doors* by Linda McQuaig; *Above the Law* by Paul Palango; *An Unauthorized History of the RCMP* by Lorne and Caroline Brown; *Parcel of Rogues* by Maude Barlow; *Out of the Blue: The Fall of the Tory Dynasty* in Ontario by Rosemary Speirs; *the History of Quebec: A Patriote's Handbook* by Léandre Bergeron; *A People's History of Prince Edward Island* by Errol Sharpe; *Drapeau* by Brian McKenna and Susan Purcell; *Up Against City Hall* by John Sewell; and such Pierre Berton books as *The National Dream*, *The Last Spike*, *The Promised Land* and *The Great Depression*. Peter C. Newman also wrote some excellent books that have helped me learn about politics and business in Canada.

That's just a starter set of readings about dysfunctional government in Canada that doesn't include such classics as *The Vertical Mosaic* by John Porter, because I haven't read it all, or stories tracing political dysfunctionality to its sponsors and beneficiaries in the private sector, such as *Red Lights on the Prairies* by James Gray; *The Developers* by James Lorimer; *Uneasy Lies the Head: The Truth about Canada's Crown Corporations* by Walter Stewart; *Electric Empire* by Paul McKay; or *Oil and Gas* by James Laxer and *Over a Barrel: A Guide to the Canadian Energy Crisis* by Jan Marmorek. *Corporate Crime in the Pharmaceutical Industry* by John Braithwaite also seems germane to Bill 107.

It seems my whole damned library of books about governments in my adopted country, and I have many more, have had the same theme of public services being run by political hacks who are out to screw the public on behalf of somebody else. From the beginning, governments were set up to serve foreign investors at the expense of local citizens with political machinery set up to facilitate corruption while maintaining a facade of public accountability.

I also have literature reviews that I could add about the people who were living here before the colonial invaders imposed their new economic reality and of the economic effects of that. For millennia before the colonial military conquest of this continent, water and air and land were considered resources for everyone's benefit rather than a profit source for infinitely greedy interests maximizing short-term private profit at long-term public costs, then calling it "resources development." An annotated literature review of how brain-dead the Common Senses' economic policies are could easily use up 15 minutes all by itself.

Years ago, I dropped out of academia to read, think and write about alternative futures and how they might happen. One of the ways I tried to pay my bills while doing so was driving taxis. Having a professional background as a program evaluation researcher, I made a practice of thinking of ways that traffic congestion problems could be reduced. Once upon a time I had a taxi trip with a fellow who worked as a civil servant in either transportation or environmental policy at Queen's Park. When I accosted him with suggestions for how megabucks could be saved in wasted fuel and time, he pointed out to me that civil servants weren't as dumb as they were publicized as being and most of the ideas I was suggesting had already been suggested by people like himself, but killed by political hacks more interested in making money for interests like petrochemical corporations than in saving money for the citizens of Ontario.

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I never gave a public deputation until April 28, 1992, when I spoke to the Toronto Transit Commission about the electric trolley issue as the beginning of the case study in political dysfunctionality. What happened with Toronto's electric trolleys is a model of bad government in action that's been repeated in all sort of other situations, including the Orwellianly titled *Water and Sewage Improvement Act*.

Some bean counter at the Toronto Transit Commission said that people would be better off getting rid of an electric trolley system that had been operating in a cost-effective way for decades with all-night service through residential neighbourhoods, while making minimal noise and leaving its pollution at electric power stations rather than in city air, where it would be most likely to create health problems. Local citizens were used to oil companies behaving like that, but not a public institution like the TTC.

At the time I initiated the electric trolley case study in political dysfunctionality, the allegedly objective, non-partisan head of the bureaucracy was a political appointee who was even less accountable to the public than a politician who doesn't care about getting re-elected. I'd not encountered this individual before and have had no particular personal animosity towards him other than his being an unmistakable example of this sort of interchangeable, unaccountable political hack who screws the public on behalf of interests with hidden agendas. Having seen this political machinery in action in 1992 and 1993, this helped me understand the Common Senses and their revolution.

In a prelude to the megacity issue and alleged improvements to water and sewage, what started out as a matter of cost-efficiency in the choice of transit vehicles became a matter of democracy and integrity of government. In the face of considerable public outcry, the political machinery would stonewall petitions, demonstrations and deputations to rely on secret reports from experts hired by the political machinery. When caught in awkward situations, there was no apparent shame in telling outright lies. Many citizens were concerned that their public transit system was being run by political machinery that wanted public transit to screw up expensively so that people would drive cars and buy gasoline and insurance and use parking lots and car pounds, and had other hidden agendas.

While the Common Senseurs and their tag team partners have been quick to try to save money for governments in other ways, they don't seem to have considered reducing the costs of political hacks not particularly accountable to the public, making public decisions to screw most of the public on behalf of whoever or whatever might be behind flak-catchers of the sort I've observed in the electric trolley case study and the megacity issue and on into its continuation into contaminants of drinking water that the Common Senseurs want to make corporate and profitable.

Canadians historically have been willing to shrug off bad weather and bad governments as long as some illusion can be maintained that the crooks who happen to be in power at the time aren't ripping off the public too outrageously. The present government of Ontario has overstepped the lines of "too outrageously," having exposed itself as being case study examples of political hacks pimping for interests with hidden agendas. The Common Senseurs at Queen's Park have been responsible for a massive public education campaign in which thousands of otherwise apathetic citizens have had a chance to witness the political machinery in action, getting increasingly agitated with its disdain for public concerns and discovering that public institutions we thought we could trust not to screw us too outrageously seem to have been taken over by interests that apparently want to do just that.

Bad governments have been a tradition in the great white north. This government has gone beyond bad to outright evil. The government of Ontario has no more mandate to sell off public water than to impose a megacity on Toronto against the wishes of its citizens. It would not have been elected if it told the voters what it was going to do. The political machinery has no mandate to keep election promises it didn't make. It's time for another election rather than a continuing fascist coup.

The Chair: Your time has expired. We thank you for taking the time to come before us today with your presentation.

ELEANOR DUDAR

The Chair: I now call Eleanor Dudar. Welcome.

Ms Eleanor Dudar: Good afternoon. I want to start with some very basic questions. First, why am I here? Second, what is the purpose of this committee hearing?

I'm here to talk about only a few of the issues raised by Bill 107. When I began to write this, I realized there

was indeed a lot more than I could possibly touch on in 15 minutes. Much, perhaps all of what I say, will have been said by others. My presentation to you may not in itself cause you to stop and rethink, but I hope that if my remarks are part of a pattern you hear, you will take these ideas seriously.

The experience of the committee hearings on Bill 103 was profoundly dismaying. So very few of the many excellent suggestions offered were heeded and the changes that were made were small and superficial. That brings me to my second question: What is the purpose of this committee hearing?

I intend to take it seriously, to assume that you are putting aside your ideological beliefs and listening with as open a mind as you can to gather different perspectives on the issues and then make changes that respond to people's reasonable concerns. I will not do you the disservice of thinking that this is merely a sham exercise in consultation. Therefore, I challenge you to take yourselves seriously as people who have a responsibility to ensure the health and wellbeing of Ontario's people and the environment.

While Bill 107 can be characterized as merely a piece of legislation that allows transfer of local water and sewage works to municipalities, it is in fact about much more. My remarks will focus mainly on the issue of privatization that this brings to the fore and on how what isn't in the bill tells us a lot about the bill's real intent.

My apologies to the opposition members of this committee. I must address myself to the government members, as the power to change or indeed withdraw the bill rests with them.

What is Bill 107 about? Ostensibly, it is part of this government's passion for being the tidy housekeeper of Ontario, disentangling provincial and municipal roles in the delivery of water and sewage services, giving the minister the power to transfer ownership of water and sewage works from the Ontario Clean Water Agency to municipalities and, we are repeatedly told, encouraging public ownership of water and sewage infrastructure.

This last assertion needs to be examined closely, since safe water is a basic necessity and keeping water and sewage plants in the hands of publicly elected officials is strongly favoured by 76% of Ontarians. Undoubtedly, that finding by an Insight Canada Research poll had an influence on the way the objectives of this bill were framed. Had the poll discovered instead that Ontarians favoured privatization of water and sewage services, the writers of this bill could have said more openly what your government's more likely agenda is in proposing this legislation.

Looking carefully at what is missing is one way to discern the bill's real intent.

(1) Municipalities have to repay money given or loaned by the province if they sell their water and sewage systems to private interests. This proviso is said to represent a major disincentive to privatization. Curiously, municipalities are not required to repay the interest on this money or loans made by the federal government, so there's a kind of doublespeak here, isn't there? Some public money has to be repaid, but a lot of it does not.

There's a pretence, then, of penalizing municipalities that seek or are forced to sell their water and sewage treatment plants to the private sector, but the money that doesn't have to be repaid — the interest on the debt to the province — would in most cases likely be far greater than the principal owed, just as the interest payments you make over time on a house mortgage are far greater than the principal.

The fact that in the case of disputes about moneys owed the minister has the sole power to arbitrate is a worrisome sign of this government's continued concentration of real power in the hands of a few in order to forestall an adequate and fair process of public consultation.

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If you really want to protect the public's investment, amend the bill so that all public moneys plus interest must be repaid in the event of privatization. Unless you make that change, the bill represents another instance of a government's scheme to subsidize the private sector with public money, just not as much public money.

The bill is not about encouraging public ownership at all. This bill, like others your government has introduced, calls for comment on the way you do business. Saying the opposite of what really is going on is a recurring habit of this government.

Thus we had Mr Leach solemnly and endlessly intoning that he saw no real public expression of rejection of Bill 103. In his mind and that of the Premier the referendums didn't count, because they weren't scientific enough or they didn't put the question clearly or not enough people voted, even though more people in Metro Toronto voted against the megacity than voted for Conservative candidates in the last election.

If ministers of your government can make assertions like that, there are few bounds to what doublespeak we are going to be subjected to. In Bill 107, it is the pretence of serving the public interest when quite clearly it is the private interest that will be advantaged.

You seem to have believed too well the adage that if you tell a lie often enough, people will believe you. Hence your spin doctors titled your grossly unjust Municipal Tax Reform Act, Bill 106, fair and graced this water and sewage transfer act with the noun "improvement" when there is nothing anywhere in the bill that smacks of it, not even the appearance of the word itself.

Yours has become a government bent on dangerous extremes blinkered by an ideological vision, corrupted by a flagrant disregard for speaking honestly and resorting to all sorts of measures to place the legislation and its impact above reasonable challenge through public hearings or through the courts. In this, ladies and gentlemen, you tread a dangerous path.

Unlike previous Conservative, Liberal and NDP governments, you have taken a confrontational rather than a consensual approach to governing. The get-tough, Thatcherite strategy — and it does have to be named as that and seen more and more clearly as that — you are pursuing, pandering to a small powerful élite, counting on the stunted indifference of enough regular folks alienated from the political process and saying the hell with the rest, has worked for a time, but Ontario isn't Britain and we are capable of learning from history.

Ontarians are accustomed to being listened to and having their input make a difference. Your arrogant dismissal of the many wise and thoughtful suggestions for amendments to Bill 103, for instance, some of them presented by people who knew a lot about city governance, shocked a great many more people than I suspect you bargained for.

One way you can mitigate the real damage done to your government by that fiasco is for government members of this committee to differentiate themselves from the government majority that heard depositions on Bill 103.

It can be achieved quite simply: Show yourselves capable of reason. Pay attention to what people here have to say, experts and regular folks alike, and show us that you hear us by the changes you subsequently make to this bill. Otherwise, the downward slide in the polls that you have recently begun to experience will only accelerate.

The minister himself has declared his belief in the principle of public control of water and sewage services, pointing out that water service is different from roads because the supplier has a monopoly. That being the case, I call on the government members of this committee to pass an amendment that explicitly declares that privatizing water and sewage services is not allowed.

Sometimes even a government such as yours, dedicated to reducing government influence, has to act in the public interest. Safe, clean water is a necessity of life, a basic right, not a commodity that should be delivered to our taps at a price that will fatten the pockets of private investors.

(2) Another piece missing is the bill's intention with regard to the fate of the Ontario Clean Water Agency. Since the public so overwhelmingly favours keeping water resources and their treatment in public hands, it makes sense that our clean water agency be maintained and even strengthened.

The reasons for the agency's creation have not disappeared. In fact, it is clear that the need to have a public body that monitors environmental and public health risks is greater now than it was in 1993. We need an independent public regulator, yet it appears that serious consideration is being given to privatizing this body as well, even though you can point to places in the bill where OCWA will apparently continue to perform many of the functions it does now. More doublespeak.

Yesterday's timely front-page story in the *Globe and Mail* alludes to some of the inadequacies in our local water treatment that have led to some home-grown epidemics. While one could argue that this buttresses the case for privatization, in fact there is no evidence suggesting that a company driven by a for-profit motive is going to be interested in the costliness of effective monitoring and regulation that is required.

As it is, in Ontario today, thanks to your government's savage downsizing of staff in the Ministry of Environment and Energy, there are not enough inspectors on the job to maintain an adequate inspection regime of our water and sewage treatment plants.

The cryptosporidium outbreak that killed 100 people in Milwaukee and made another 400,000 ill also happened

here in Ontario, thankfully on a much smaller scale, just last year in Collingwood. As you know, the Environmental Commissioner has reported that currently at least 40 surface water treatment plants in the province are potentially vulnerable to cryptosporidium.

It is the business of the state, not the market, to ensure that we have a safe water supply. We need the clean water agency's role as an independent regulator to be confirmed within the context of the bill. How can you call this bill an improvement without it? Show us that you are sincere about safeguarding our water supply by making the role of public inspection clear. Further, make it doable by ensuring adequate funding.

I pay taxes so that we can continue to live in a safe and civil society. Don't offer me a tax cut, one of the many hidden consequences of which may be the possibility of widespread waterborne disease. Think about why we have a government in the first place and assume full responsibility for protecting the public interest.

(3) There are a number of other things that are missing either in the bill or in backgrounders to the bill. One of the really important omissions is an accounting of the money involved here. If the changes being made possible are going to be of tremendous benefit to the public, I suggest that we would see those favourable figures banded about. Their noticeable absence strongly suggests that the monetary benefits to be realized will accrue only to the private sector.

(4) Because I'm going to run out of time, I must turn to the biggest missing piece of all: the bill's demonstrated inability to think beyond the most conventional of categories. The bill is mechanical and technical in nature and, while this is one characteristic of government bills, they need not be limited in this way. The bill has no big-picture thinking embedded other than perhaps the prospect of big profits for the large corporations who will be able to afford to repay the principal owed on government grants and loans, unless of course the minister decides to lower the amount which this bill gives him the power to do.

I began by listing the major objectives as named in your government's background compendium. Let me get specific about just how out of step with the times this bill is in that list of objectives. Unbelievably, in 1997, there is no mention in that list of environmental protection or resource conservation — none whatsoever. There is no ecological thinking embedded in the bill at all. The framers of the legislation are working completely in terms of money and power. Do you really believe that those are sufficient criteria to be considered in drafting legislation about a resource which is the very basis of all life?

Without ecological thinking, that quality of mind that seeks out connections and develops a competence and understanding of how things are interrelated, the bill is simply inadequate. At this point in Ontario's history, ecological thinking should be woven into every piece of legislation you produce. At it's most philosophical, ecological thinking about Ontario's water and sewage would relate it to the health of all the other interdependent natural systems whose health, our human health, depends on.

Ecological thinking would also relate our water and sewage treatment systems to human impacts and how we can lessen them. For example, wiser land use planning that explicitly protects groundwaters and headwaters. Are you up to the challenge?

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The Chair: Excuse me. I must interrupt. Are you just finishing? The time is up.

Ms Dudar: Yes. You could signal this future-looking orientation by simply framing a statement at the beginning of your bill, one that you could point to with pride 20 years down the road when problems of scarce water become serious. Some of you have children, perhaps even grandchildren, but whether or not you do, as legislators of this province you all have a responsibility to future generations.

But this is only one little bill, you could say. I'm here to say that it has vast implications, as does anything to do with our natural resources and the health of the planet. If you really want to be leaders that future generations will look up to, you need to safeguard these precious resources. You need to make the focus of your legislation not disentanglement, but sustainability.

I want to end by including a quote from environmental educator David Orr. Here's one of the things he has to say about sustainability:

"The crisis of sustainability, the fit between humanity and its habitat, is manifest in varying ways and degrees everywhere on Earth. It is not only a permanent feature on the public agenda; for all practical purposes, it is the agenda. No other crisis of politics, economics and public policy will remain unaffected by the crises of resources, population, climate change, species extinction, acid rain, deforestation, ozone depletion and soil loss. Sustainability is about the terms and conditions of human survival, and yet we still educate at all levels as if no crisis existed. Our laws, likewise, are written as if no crisis existed."

Take back Bill 107.

The Chair: Thank you. Sorry. We must wrap up. I'm sorry. Your time has expired.

Ms Dudar: Spend some time thinking about how you can make this a really impressive piece of legislation, one that will become a benchmark for other laws.

The Chair: Thank you very much.

Ms Dudar: Show some civic pride.

The Chair: Thank you very much. I'm sorry, your time is expired. We do appreciate you taking the time to come today.

Ms Dudar: Thank you very much.

Applause.

The Chair: I would just like to remind the members who are here and the people who are here in the gallery that the legislative committee is an arm of the Legislature and we must operate under the same rules that we operate within the Legislative Assembly, which means that people are allowed to come into the gallery and participate in the hearings, but you must not display banners or clap or any of that sort of thing. I ask for your indulgence in that regard, please. Thank you.

Mr Laughren: Madam Chair, do we have a copy of that presentation? It's certainly one of the better ones we've received.

The Chair: I don't believe we do, no.

Mr Laughren: I'd really like a copy.

The Chair: If you'd care to leave it with us, the clerk will make sure we get copies. Thanks.

GEORGIAN BAY ASSOCIATION

The Chair: Is Mr Birnbaum here now, please? Welcome.

Mr John Birnbaum: Thank you, Madam Chair. I'm John Birnbaum. I'm executive director of the Georgian Bay Association. I'm joined today by Annaliese Grieve, who is a member of our GBA environment committee. I'm going to read part of the presentation, and then Mrs Grieve will conclude.

Good afternoon. The Georgian Bay Association is pleased to contribute to your review of Bill 107. As a regional residents' association representing 5,000 families on the eastern and northern shores of Georgian Bay and adjacent lakes, we've been exposed to two specific foci of the legislation that allow us to comment first hand and to share specific suggestions for your consideration.

First, the good news: The Georgian Bay Association applauds the provisions of the bill that allow municipal assumption of authority for private septic system inspection and approval. It's been obvious for years that the MOEE, under several administrations, has been unable or unwilling to effectively assume this responsibility.

As resources and manpower have been removed, the responsibility for maintaining water quality and public health in cottage communities has been abandoned to a minuscule ministry program which seemed lately to depend on voluntary cottage association self-inspection programs.

We have encouraged progressive townships like the township of The Archipelago in Parry Sound district to pursue a pilot program with MOEE to assume this responsibility. Its success over the last few years demonstrates that the program can be administered on a cost-recovery basis, with either the planning or building departments trained and responsible for the program.

It's our hope and expectation that local municipalities will, over time, have the capacity to reinspect every septic tank on a regular basis, that is, every five to 10 years, compared to no reinspection now. We also expect that septic system plans can be filed with local authorities to enable new owners to then review the maintenance records and age of their new systems, which is unavailable to them now.

For our largely water-based communities, our water is everything: it's our view, it's our recreation, it's often our drinking water source, it's our highway. As more cottages are built and more cruising boats arrive to share this finite resource, we all must share responsibility for water quality. This bill will move us closer to being able to do our share.

Mrs Annaliese Grieve: The GBA's recent involvement with the York region long-term water supply study has raised several issues concerning how water diversion projects are planned and approved and the involvement of private interests in the provision of sewage and water services.

We opposed the region's proposal to direct water from Georgian Bay to meet its long-term demand. Water diversion and major water pipeline projects are unique and large in scale and their environmental effects are very difficult to predict. We recognized that, if successful, York was likely to be just the first of many more diversion projects. This bill must provide a framework to provide for public oversight of these projects. This is not presently reflected in the bill.

Bill 107 should be amended to include the appointment of an independent board or body to oversee the development and operation of sewage and waterworks, particularly those being operated by private sector interests. This board should follow the model of the Ontario Energy Board and have powers related to setting approval standards.

Furthermore, Bill 107 should be amended to state that any movement of water or sewage that represents a transfer of water from one watershed to another should be the subject of the full requirements of the Environmental Assessment Act, not the class EA process as was attempted with York region.

We appreciate this opportunity to share these recommendations with the committee and would be pleased to respond to questions if time permits.

The Chair: You've been very generous in allowing time for questions. We have 10 minutes. That's a little over three minutes for each caucus.

Mr Maves: Thank you for coming and making your presentation today. I don't have a lot. I'm just curious about your opening paragraph or maybe your third paragraph where you've talked about your problems with the MOEE over several administrations. Therefore for several years you've had a problem getting the attention of the MOEE. I wonder if you could expand a little bit on that.

Mr Birnbaum: Well, we're trying to be as non-partisan as we can in these difficult times.

Mr Maves: Oh no, I'm not worried about the administrations, but the problems with the MOEE.

Mr Birnbaum: Quite frankly, initially, many years ago, the MOEE had a number of individuals in cottage country and attempted to inspect a substantial number of systems on a regular basis. It also provided for inspection of sites for new facilities. Over time, they first devolved the responsibility for new approvals to firms that were hired for that purpose. Those firms inevitably hired summer students who arrived at the site knowing less about septic systems, often, than the cottagers they were there to advise. The cottage reinspection program or the cottage inspection program devolved over years, so I think in this last year it inspected perhaps 1,000 cottages in all of Ontario. That's a minuscule amount with all of the systems existing. The authority that has vested with MOEE for all of those services has essentially been ignored, and the excuse is that they don't have the personnel, they don't have the budget. It's simply been a void.

1450

Mr Maves: You seem pleased that the municipalities will have more control over this. Have you had experience where they've been more attentive and more responsive to these issues?

Mr Birnbaum: Yes. As I alluded to, the township of The Archipelago in Parry Sound district initiated a pilot project with MOEE several years ago where MOEE delegated and trained municipal personnel to carry out that function. Quite frankly, one of the changes put in place was to charge a sustainable fee for that service. Instead of the \$35 the government was charging, a fee of \$100 to \$300 was charged for either reinspections or for inspections of new sites. Over time, we believe that on a cost-recovery basis, ie, the cottager who gets reinspected pays \$100, the cottage owner who wishes a new system pays \$300 for his site approvals and evaluation of the proper site, and that goes into the pot, that will pay for reinspections of the existing systems.

So we think this could be done on a cost-recovery basis. Frankly, it's imperative that it be done. Otherwise, we have difficulty appearing before Dr Galt asking for consideration of grey water legislation, to require it to be held by votes, when in fact we can't come to the table with clean hands and say that all of our systems have been reinspected and are confirmed to be operating correctly.

Mr Hoy: Thank you very much for being here today. The county I live in is 92% farm land, so there are a lot of septic tanks in the area. We had the health inspectors of Ontario here today talking about the need for extensive study, the fact that perhaps most building inspectors wouldn't be able to do inspections of sewage septic tanks at the current time, they would have to be educated to that, and they thought it was a rather extensive education procedure indeed. As well, conservation authorities in my area have the authority to allow for or disallow septic tank systems.

I just want to make the comment that — I'm going by memory, but I think it was August 4, 1995, and for some reason that date, of all the dates I have in my mind, sticks with me, but I asked the ministry to finally decide on one type of septic system or another, and to date I still don't have that answer. It appears to me that perhaps it's going to be left up to the municipality in question, and then even to that, they don't know whether it will be the upper tier or the lower tier, the unicity, the unicity or whatever might evolve in the restructuring of Ontario. That's some of my experience, and I just wanted to comment on this voluntary self-inspection program that you have in your area.

Mr Birnbaum: I've perhaps been misunderstood. The present system that is now in place is what we are terming a voluntary self-inspection. They're asking us to inspect our own systems and report if we see difficulties.

A couple of things you've said: one, the approval of the system that can be installed, or the municipality's jurisdiction over approving the type of system. I think that's going to be a great strength. These systems obviously will have to be approved as acceptable to MOEE, and frankly, there's been a dearth of them. There haven't been many new systems approved. There's a general reluctance to get too involved, other than in research, in any of the new systems.

We live in Georgian Bay. We live on rocks. There's very little ground cover. We're very anxious to explore some of the new single-bypass filters that Waterloo

developed and the ministry is testing. We're very anxious for our local municipality to be able to have authority to be creative about those sorts of things, always being effective, needless to say. I don't think that should be a problem.

With regard to training, I think that can be done. I assume it would be done through the private sector, again, since government doesn't even have the personnel to train the people who are going to be inspectors. If they were trained properly, I think they could do a good job. I think either the planning department or the building department has the capacity, when they're out at the site in any case doing other things, to approve those things in a cost-effective way. I think this can be made to work.

Mr Laughren: I appreciated your presentation. I'm just a country boy from the north, but I've always thought the whole principle of the septic system should be one of the wonders of the world. I've actually grown quite attached to mine, and I've always worried about inspections of them and so forth, because they're never inspected.

Mr Birnbaum: That's right.

Mr Laughren: I mean never, and I do worry about that. If I could engage in some mea culpa, I had problems with mine that I didn't know about until it was too late, and then I had to tear the whole thing up and so forth.

I'm not saying this will happen, but with the shift of many responsibilities from the province down to the municipalities, with the tradeoff from education taxes, I'm worried about municipalities being able to do this. I don't worry about them doing it, them having that responsibility; that doesn't tear me apart. It's whether or not, given all the extra costs they're going to have — and we know that's the case, it's not hypothetical or rhetorical; they're going to have extra costs — they will make this a priority, because there are a lot more septic systems in this province than most people realize; especially if they live in downtown Toronto, they never have to think about septic systems.

So I'm worried, and I wondered if you share any of that concern. Maybe your municipality is different, I don't know, but, boy my municipality is going to be scratching for every penny they find they can save. I'm worried whether they'll have the ability, the incentive or the will to actually go out and do the inspections properly.

Mr Birnbaum: I can speak for cottage country communities. The township I'm in, the township of Georgian Bay, has 88% seasonal population; the township of The Archipelago has 98% seasonal population. Your community, I would guess, has under 50% seasonal, and there's a high farming component. In our areas, there is overwhelming pressure from cottage associations to know the score on their septic systems. I am now being charged, with our member associations, in working with the municipalities to be sure they're in place. Even in October — this bill talks about transferring authority in October — I suspect you'd probably be wiser to think about some time in the new year.

Mr Laughren: That has been changed, by the way.

Mr Birnbaum: Oh, has it?

Mr Laughren: Yes.

Mr Birnbaum: To January?

Mr Laughren: The minister announced not earlier than January 1, 1998.

Mr Birnbaum: Thank you. I think that's probably reasonable. I doubt there will be any opportunity for our councils not to have a fully effective program in place, and there will be enough business for them that the system can be cost recovery.

With regard to your community and others where there is probably more distance in between septic systems to be inspected and perhaps not the same momentum to get started, that may be a difficulty, and there may well be a need for the province to continue to be vigilant in this area and to perhaps ask for performance reports from the municipalities on a regular basis so that they can be judged on their performance.

The Chair: Thank you very much. We appreciate your taking the time to come down today and present your perspective to us.

1500

JOZSEF IZSAK

The Chair: We'd now like to welcome Mr Izsak. The 3 o'clock appointment indicated they're running a bit late, so we're moving to the 3:15 presenter. Welcome.

Mr Jozsef Izsak: Thank you. Just to eliminate any suspense, I'm against Bill 107. Notwithstanding what its name is, it really appears to be a bill intended to open the way to privatizing water and sewage services. I don't think it's necessary for me to go over a lot of ground that's been covered before and I suspect will be covered amply with regard to the specific shortcomings of it and the technical things.

I find myself having a great deal of difficulty understanding the motivations of a government in bringing in bills of this nature, because it's well known that when you put the responsibility for this type of service down to the local level, the municipality simply can't pay for it, and so it seems designed to ensure that these things end up being privatized. That suggests that somehow the idea of privatization is a very good thing and it's regarded as a type of progress if more and more public services end up in the hands of individuals or corporations that are going to be able to mark them up.

I've always found it puzzling that people could seriously suggest that when you add corporate profits to the cost of something, it's going to result in a decreased cost. It's perfectly clear that if a municipality simply can't afford to pay for it, if they privatize it then obviously the salaries and the cost of providing the service will no longer fall to the municipality. But a corporation is not going to buy and maintain a utility because they think that's a fun thing to do. It's not like hang-gliding, where you make an investment for your own pleasure. The people who use the water and the sewage system are going to be paying the costs of purchasing the utility irrespective of how expensive it is for the private company to acquire. They're also going to be paying the interest on whatever loans the corporation has to take out to make the purchase, and they're going to be paying for a profit on top of that. So the prices are going to go up

here for water just like they've gone up everywhere else this has been tried.

This brings up the idea that clearly water is just like VCRs or expensive cars and people exercise their democratic right to avail themselves of these luxuries. Maybe someone will choose not to drink water or bathe because they'll put their money into a VCR, or if someone chooses not to be able to afford water or a VCR, it's because he has made a choice to withhold his labours because he couldn't get the price for his labour that he wanted. So this is all very democratic. I'm not going to patronize anyone by explaining the shortcomings of this type of reasoning.

I'm pretty concerned about having to share the city or the province with some of those people who had their water cut off, for a number of reasons. If you look back to the Middle Ages, which I'm not really anxious to revisit personally, and it appears to be in the cards, the custom arose of men walking on the outside because people were throwing excrement from their chamber pots out their windows and it tended not to land too close to the buildings, so the men were gallant enough to risk having the stuff fall on them. I'm really not interested in having my gallantry tested in that way. It doesn't seem rational to me to want to put people in the position of not being able to flush their own toilets. This is not a good thing.

Further to the legitimacy of private profits, a lot of people believe that it makes a lot of sense for the rich to be in control of everything because they've demonstrated by virtue of their success that they're just smarter people, they're better people; it's natural selection taking its course. The assumption implicit in that which I think is faulty is that the wisest, most intelligent, capable people will have no other goals but to become as wealthy as possible. This suggests that Van Gogh is a worthless idiot. This suggests that there aren't any Christians in the government, because Christ was obviously an idiot because he was poor and thought this was a perfectly reasonable thing.

On my way here about an hour ago I bumped into Professor Ants Elken, who was one of my professors at the University of Toronto School of Architecture. He's in every sense a great architect and, to me, in every way a great man. He has a little house; he's not wealthy. He lives on his pension; I guess he's about 82. Presumably someone with few assets, like Professor Elken, is obvious someone who should pay increased taxes and user fees for everything, because the really important people are the ones who are going to be able to afford to buy the utilities. They're already billionaires, they're going to become multibillionaires some day, and the rest of us are the rabble who really deserve to die out.

The interesting thing about this is that it appears that by adopting the notion that the biggest and the strongest are inherently the best, we seem to be adopting the social structure of the gorillas, because gorillas are ruled by the biggest and strongest gorilla, not the oldest and wisest gorilla. I don't think this is progress, really. I think we had it right 100 years ago when we started having public resources in the area of water.

I'm also reminded of a lot of concerns that people have had over the years. A lot of fiction writers have written about worlds wherein people created artificial entities to make their lives easier and better, and then they were taken over by these creations and they had to serve them. They only survived at the pleasure of these artificial beings.

It seems that we've brought that about, but they're not robots, they're corporations. We've created these artificial entities, these legal constructions that are corporations. They are now the richest things in the world. The biggest corporations are richer and more powerful and bigger than a great many nations are, and a corporation's only priority is to increase its profit, to maximize its profit.

So human beings, who are inherently decent people and care about their friends and their families, have to serve these mindless, soulless things, and the only way to please the corporation is to improve its bottom line and so they end up doing things that people like me fear in this particular instance that are going to increase the incidence of diseases, that are going to drive people over the brink and cause them to become violent. All these things are going to happen because we're being ruled by creatures that aren't human, that don't have any feelings, that don't have any morals. I don't think this is a direction we should continue to move in.

The final thing I want to attack is — I shouldn't have said "attack," that's such a hostile expression; let's say "examine" — the justification for everything that we do is to conserve money, because money's always in short supply. Money is a rare, precious, non-renewable resource. Somehow, because of our own personal relationship with money, which for most of us is always one of an insufficiency, we've come to believe that money, even though it appears to be made of paper and ink, is actually a non-renewable resource. We don't seem to concern ourselves with where money comes from, because we assume that someone, somewhere, is taking care of creating money and all we can do is just struggle to conserve what little we have.

We have the idiotic situation that we've abandoned using gold as money, because it was perpetually in short supply; people couldn't do all the work that they were capable of to serve markets that existed for their goods and services, because there wasn't enough money for everyone to buy everything that could be produced. Now we have an artificial scarcity of paper money so that Canadians can't work, even though they have skills and training and tools and modern factories and a market for the goods and services, because of a shortage of money. Here we are, intelligent, educated people and we're discussing whether we should downsize this and privatize that and cause all sorts of misery in order to supposedly save Canadian dollars? This is just so crazy.

Imagine if the post office had people lining up to send mail, and half of them had to be turned away because there was a shortage of stamps. People would say: "What is this nonsense? You've got letter carriers. You've got post offices. Just take the bloody mail. Sell me a stamp." The response would be: "There really aren't enough stamps for everybody. If we print any more, they'll lose their value. We'll have inflation. What we have to do is

make better use of the stamps we have, and we've already borrowed so many stamps, we're terribly in debt."

This is so idiotic. We've got the same situation with paper money. We've got a finance minister who pretends he doesn't know where paper money comes from. We've privatized money creation, so governments can't get money; all they can do is borrow it and pay interest on it to private banks who create it out of thin air. It's so crazy.

And if I can remember the last thing I wanted to say I'll be really delighted, because it has slipped my mind now. No, I think it's gone. Does anybody have any questions? I have no idea how much time I have.

1510

The Chair: We have just two minutes remaining for questions.

Mr Hoy: Thank you very much for your presentation. In your opening remarks, you were concerned about the privatization of water and perhaps the sewage aspect of this bill as well, and how it could be made cheaper by privatizing when you have shareholder interests and maybe salaries of CEOs etc, maybe three or four vice-presidents — who knows? Those concerns I think you've heard here as well today, and I appreciate your comments. Shareholder demands can be strenuous. They can be onerous on those heads of companies. Layoffs can occur even in their sector. I appreciate your comments as to whether privatization will actually make this system under Bill 107 any better than it is now. Thank you.

Mr Izsak: How can it possibly make it better? When you look into economics, as I have for five years, it just gets crazier and crazier and there are more and more layers to the onion, and with the kind of rampant greed that we've now legitimized throughout our society, what you get is a situation where CEOs are no longer working for the benefit of the company, because if they can hurt the company by improving its immediate bottom line, and therefore putting up the share value, they get an enormous bonus. So they get millions of dollars in a single year's salary, the company is going to be weakened in the long run, and of course more and more people get laid off. It's a lose-lose situation for everybody except the CEO certainly, and the shareholders supposedly, because they reap a paper profit but stocks are one of these things that generally — we've been seeing increasing share values, but if anybody actually wanted to realize those profits, the value would suddenly plummet. We've created an enormous, very unstable house of cards here in the financial sector.

Mr Laughren: I won't get into the money supply debate with you. Maybe some other time, over many beers or something.

You started out by questioning the motivation of privatization, or as a young gentleman referred to it at noon, privatization of our water supply, and I want to give him credit for that. It's not my line. If I could help you on that motivation, and you're not supposed to attribute motives to honourable members, but if I were allowed to —

The Chair: But you're not.

Mr Laughren: I'm not allowed to — you might want to consider whether it's because of all the downloading

that's going on to the municipalities — that's very serious and it's substantiated all across the province — if that's occurring, the government is doing the municipalities a favour by allowing them to privatize their water supply to ease the pain a little bit at the local level. That's really what's behind it all; it's to allow the municipalities to privatize because of the downloading that's going on. The minister is saying publicly that he's not really for privatization, but at the same time he and his colleagues are making it happen. I don't think you need to go much further than that to look for motivation.

Mr Izsak: It appears that this government believes in privatization.

Mr Laughren: Yes, they do.

Mr Izsak: I think it's a mistake. We elect people to be representatives, not to be dictators. I don't know who was tossed off the comment some time ago that anybody elected here can be a dictator for four years, but in the past that wasn't a danger simply because no one would risk demonstrating that kind of disregard and contempt for the electorate because they knew they'd be tossed out of office. Certainly some unpleasant speculation arises when you see a government that seems to be completely unconcerned about the prospect of being re-elected, and you find yourself wondering, just why are they so confident, why are they so indifferent about offending the electorate?

I think one possible reason is that we have a one-party system masquerading as a multiparty system — with apologies to the NDP. They seem to be opposed to much of this. But certainly we've seen in Ottawa that no change took place.

The Chair: I'm sorry to interrupt, but our time has expired.

Mr Izsak: That's okay. I'm finished.

The Chair: We thank you for taking the time to come this afternoon though.

ONTARIO SEWER AND WATERMAIN CONSTRUCTION ASSOCIATION

The Chair: Our next presenter is Mr Sam Morra, representing the Ontario Sewer and Watermain Construction Association. Welcome.

Mr Sam Morra: Good afternoon, everybody, and thank you for the opportunity to present today. My name is Sam Morra. I am a civil engineer and the executive director of the Ontario Sewer and Watermain Construction Association. I am here to talk to you about amendments to the legislation to include transitional measures needed to ensure municipalities can afford and maintain the systems they are about to inherit.

Our proposed transition assistance program is founded on five key principles. They are: (1) mandatory reserve accounts for water and sewage infrastructure, (2) a move towards actual cost accounting, (3) mandatory five-year capital plans, (4) regionalized infrastructure systems, and (5) a province-wide infrastructure review.

The Ontario Sewer and Watermain Construction Association has represented the sewer and watermain industry for over 25 years, and draws its support from over 700 member companies engaged in the industry. Our

industry supplies, builds and rehabilitates the infrastructure which delivers clean water to people's homes and to industrial users, as well as taking away dirty water for treatment.

We applaud this government's efforts to achieve efficiencies and to create a climate in Ontario that promotes environmental and economical development. Let me say that the Ontario Sewer and Watermain Construction Association supports any attempt to clarify municipal and provincial roles in the delivery of water and sewage services.

The difficulty we see, however, is that although the direction is right, the legislation is silent on giving municipalities the right tools in order to ensure that the substantial taxpayers' investment in our water and service infrastructure will be protected.

Quite frankly, we see a need for a transition assistance program to complement the transfer of assets to municipalities so municipalities can actually support the systems they are inheriting. It makes little sense to get keys to the car, for example, if you don't have enough money to pay for gas, insurance and, more importantly, the maintenance and upkeep.

I'd like to take the remaining time to outline briefly the features and benefits of our proposed transition assistance program. We strongly urge you to consider what we have to say and respectfully request that you include these measures as part of the Water and Sewage Services Improvement Act.

Firstly, mandatory reserve accounts for water and sewer infrastructure: Historically, municipalities have financed the construction and rehabilitation of water and sewage infrastructure through a combination of property taxes, loans and provincial subsidies. Provincial subsidies have accounted for up to 85% of the capital costs in smaller communities. As a result, municipalities in these smaller communities have become addicted to the provincial subsidies.

A first step to breaking the addiction is to establish reserve accounts. Reserve accounts are accounts established by the municipality whereby money is set aside to pay for future capital projects necessary to keep the water and sewer systems healthy and efficient.

Reserve accounts act like RSPs to foster the concept of saving money now to be able to cope with the unfunded infrastructure capital liability that is steadily accruing. In the absence of a reserve account, there is no means for the system to become financially self-sufficient. When a major upgrade or replacement is required, and it will be required sometime in the future, an enormous and unnecessary burden will be placed on taxpayers.

Our experience indicates that some municipalities may have a reserve account, but these reserve accounts are used more like a chequing account to pay for a range of services. The result is that in tougher economic times, as we have experienced in the last five years, reserve accounts are depleted. This is like cashing in your RSP 20 years before your retirement and defeats the purpose of the reserve accounts. It is not enough to simply have a reserve account; it must also be solely dedicated to its intended purpose. Our solution is to require that municipi-

palities set up dedicated reserve accounts for their water and sewage systems. It's simple and it works.

Our second key principle is actual cost accounting. As I mentioned previously, the municipal reliance on subsidies has created a disincentive for municipalities to establish an accounting system that ensures that the costs charged to users actually bear a direct relationship to the costs of providing the service and eventually replacing the system. The result is that municipalities will not be positioned to address their future sewer and watermain infrastructure capital liability. This also translates into a perception that water and sewage services are cheap, which in turn translates into wasting these resources.

1520

In order to address the future infrastructure liability and encourage wise use of water, consumers need to become aware of the actual costs of delivering the service. The first step towards this end is to have municipalities separate the water and sewer bill from the property tax bill and use actual cost accounting to set appropriate rates. This will provide the necessary revenue stream to offset the infrastructure liability, and can also alter consumer attitudes in the same way that the blue box program helped to instill a sense of responsibility for waste. The result will be a move towards achieving greater efficiencies.

Key principle 3 is mandatory five-year capital plans. In addition to the dedicated reserve accounts and a movement towards actual cost accounting is the need for municipalities to establish and follow a five-year rolling capital plan.

Unfortunately, the three-year municipal election cycle has a dramatic influence on capital infrastructure programs, because elected officials consistently have demonstrated a propensity to defer longer-term capital rehabilitation programs during their relatively short terms, and especially in an election year.

A case in point is the city of Niagara Falls, which has in place a five-year capital plan. Unfortunately, the city council has decided to reduce its sewer capital infrastructure program from \$2 million annually to \$500,000, a 75% cutback, in order to maintain a zero tax increase budget for 1997. With deferral of the program, there is little hope of meeting the five-year capital program which the city of Niagara Falls adopted as part of its efforts to clean up a historic basement flooding and direct sewage discharge problem due to combined sewer overflows. No one needs to be reminded that Niagara Falls is one of the largest tourist attractions in the province and is home to one of the great natural features of the world. The sad part of council's decision is that the city is forgoing a much-needed infrastructure program at the expense of future users.

Another case in point is the regional municipality of Ottawa-Carleton, where the chairman has said that he will propose a decrease in the water rate of two cents per cubic metre to offset a projected 1997 tax increase of \$14 for Ottawa residents. He had promised not to increase Ottawa taxes during the life of the current council. The water rate cut would save the average residence about \$12 per year. The chairman overruled a staff proposal to put an estimated \$3.6 million from water-sewer revenues into reserves.

These are the types of shortsighted measures currently being adopted. By developing and sticking to a five-year plan, municipalities and their taxpayers know which direction they are headed in and how to get there.

Our fourth key principle is regionalized infrastructure systems. OSWCA supports the government's determination to achieve efficiencies at all levels of government. We applaud the introduction of legislation to allow municipalities to share infrastructure.

One of the ways to build on the initiatives already started and achieve greater efficiencies in the delivery of water and sewage services is to, where possible, regionalize infrastructure systems. This means combining what have been traditionally standalone plants and distribution-collection systems under a broader jurisdiction to take advantage of economies of scale.

Decisions about the need for capital works should be based on 20- to 30-year health and environmental considerations and on geographic watershed areas, as opposed to three-year municipal election cycles and strict municipal boundaries. This could be accomplished through joint service boards established to manage water and sewer infrastructure programs and ensure financial self-sufficiency of the systems.

Our last key principle is a province-wide infrastructure review. Part of the difficulty of deciding where money should be spent is the lack of a comprehensive set of data describing the state of infrastructure in Ontario. OSWCA supports a review of the state of water and sewage infrastructure on a province-wide basis to ensure that public money is spent where it is needed most. Information obtained from the review could be used to direct the money to where there is a defined need and would avoid frivolous applications for funds by municipalities that are in a position to finance infrastructure improvements themselves. Combined with the other measures described previously, conducting a provincial-wide review would be another step in getting Ontario's valuable water and sewage infrastructure in order.

OSWCA is prepared to work with the provincial government to develop an infrastructure review concurrent with the transition assistance program. OSWCA has concrete ideas that would ensure the review does not merely turn into a paper exercise.

In closing, these five elements describe what should be done and why. The beauty of this approach is that once it's in place, clean water is assured perpetually.

Clean water is a precious resource, and does not begin or end at the tap. It happens because of the substantial investment in the out-of-sight supply, distribution and treatment systems this province has made over the last 50 years.

OSWCA believes that by providing a transition program geared to sustaining Ontario's \$50-billion investment in water and sewer infrastructure, the provincial government will ensure the economic vitality and health of Ontario into the next century.

For those of you interested, there are additional copies I'll leave behind, including a two-page clean water infrastructure background.

I would be pleased to answer any questions at this time.

Mr Laughren: Thank you for your presentation. You speak well on behalf of the people you represent. I really had to pinch myself, though, when I saw your comment that the first step to breaking the addiction is to establish reserve accounts and to make it mandatory, that presumably you could build it into the legislation. In my own municipality where I live, the regional municipality of Sudbury, the downloading that's going on — they've documented it — is going to double property taxes in the region unless something's changed. If you were to say to Sudbury, "Not only have you got this struggle with keeping property taxes from doubling, you're now going to have to set up a reserve account," I know what they'd tell you, and it wouldn't take many words to do it.

Mr Morra: The reality of the situation is that sooner or later the regional municipality of Sudbury is going to be facing an infrastructure crisis. Whether they own up to it today or 25 years down the road is up to them.

Mr Laughren: I know when they'll own up to it. It won't be the day the downloading occurs. They won't be able to, or other municipalities either.

Mr Morra: That's why we're suggesting a transition program. If you look at the two-pager that's attached, it's a six-year transition program that doesn't cut out the MAP funding right away. It gradually weans them off.

Mr Laughren: That's gone already.

Mr Morra: That's not our understanding. Our understanding is that there is the possibility of a sort of "son of MAP" program that may come to pass. That's what we're recommending, and we're recommending that it should be over a five-year period to allow municipalities who are feeling the effects of the other downloading to develop their water rates and reserve accounts to offset these particular offloads.

Mr Laughren: Well, good luck.

Mr Maves: Thank you very much, Sam, for your presentation. Most of the figures that many of the municipalities are saying they're going to be short by don't include the extra billion dollars we kick in on an annual basis. For instance, we're giving them \$6.4 billion worth of new costs to take over and \$5.4 billion of revenues from education taxes. To make that up, we also have an annual fund of \$1 billion. We also have, as you've alluded to, an \$800-million program over four years for transition for the very thing you're talking about, so when people take over things like the sewer systems and water systems, they have access to \$800 million worth of capital. You are accurate on that. There's also \$750 million-plus that will go into an account in case welfare rates rise to an uncontrollable level.

1530

Mr Morra: That is the key, to provide some transitional assistance, because you've got municipalities that have been used to 85% funding that all of a sudden may be faced with zero. Unfortunately, because of the process in the past, they perhaps haven't been astute enough to develop their own dedicated reserve accounts and the proper levels of water rates to be charged to their users, so in fairness to them, this jolt needs to be buffered over at least a few years.

Mr Maves: It's over four years.

Mr Hoy: Thank you very much for your presentation. Your plan sounds very good indeed. However, it actually fuels the debate that the municipalities, rather than try to find these funds, raise taxes, have dedicated amounts of money put away in reserves — their possible inability to do that with the other downloading occurring is precisely the argument for why they would sell it and privatize it. They may not have the ability to accumulate funds for transitional purposes or dedicate funds specifically to water and sewage management.

This morning a group said that water rates may increase in some municipalities in order to pay for services other than the delivery of and maintaining the quality of water. If a municipal politician had a choice between putting in a toll road — which they're talking about next door to my riding — and raising the water rates, they may choose to raise the water rates rather than have this toll set up at the end of the road. It's just a possibility.

Your plan is very wise and thoughtful for the future. As you say, the infrastructure, if it isn't crumbling already in some areas, will some day. But it's the ability of the municipalities to do this, and I think that's what's fuelling some of the debate here from many presenters that they will simply sell this off.

Mr Morra: You've got to remember that the municipalities we're talking about are smaller rural municipalities. The private sector is not particularly attracted to these types of scenarios where you've got a low customer base and very little way to recoup your investment. From the private sector's point of view, they would like to see the most concentration of people in the smallest area so they can derive revenues. They are not going to be attracted to these areas. That's my belief.

Mr Hoy: What if they had them all?

Mr Morra: Perhaps, but smaller areas usually don't attract the privatization people.

Mr Hoy: So the small area really is between a rock and a hard place.

Mr Morra: You're right.

The Chair: Mr Morra, thank you very much for your advice. We appreciate your taking the time to come today.

LOW INCOME FAMILIES TOGETHER

The Chair: Would Josephine Grey, representing Low Income Families Together, please come forward. Welcome. You have 15 minutes for your presentation time. That includes your presentation and time for questions from caucuses.

Ms Josephine Grey: Thank you. Ladies and gentlemen, I came here today to present the concerns of Low Income Families Together regarding Bill 107. We are an 11-year-old resource and education centre which provides community education and economic development services to low-income families and communities.

Our greatest concern is that Bill 107 will pave the way to the privatization of water and sewage treatment. Water is a fundamental requirement of life and as such is a basic right in every United Nations country. Ever since it became clear that the health of the population is funda-

mentally dependent on the cleanliness of water, it has been the responsibility of the state to ensure its cleanliness and sustainability. The fulfilment of this responsibility has been the most significant factor in improving human health in the past century. How the concept of selling this right and the foundation of the ecology and the economy to the highest bidder can be justified, I cannot say.

I remember as a child I was swinging in the park with my friend and we laughed at the idea that some day they could make you pay for water or die for lack of it. We had just seen the beginning of bottled water and growing public awareness of the dangers of water pollution, and this sparked some childish extrapolation. At the time, it seemed too dastardly for words and we thought government would never allow it; that's why we laughed. I believed then that at least the fundamentals like sanitation, health and education were eternally protected by government in the interests of all the people. As a mother of four children, I am certainly not laughing now.

I would like to present the following information to add to the possibility your government would choose a more informed and sustainable direction to ensure the health and wellbeing of the water, the people and the environment.

At this point, I have to note that I'm going to select certain sections of my presentation and not read the whole thing for the sake of time.

In other countries where water has been privatized, water prices have increased sharply and water supply has been cut off to thousands of households. Even that well-known radical organization the British Medical Association has called for a ban on water disconnections in England.

In Canada, too many low-income housing units already have very high utilities costs. There's electric heating and hot water, the cheapest to install, but the most expensive in terms of consumption costs.

The burden on low-income families or people facing even temporary displacement from the labour force leads to utilities being disconnected far too often. It may be hard for members of this committee to relate to the crisis which results from the lack of access to water or even an interruption of service can create, the kind of havoc it can create in a family with children — you'll have to excuse me; this is an upsetting issue for me. They are suddenly unable to wash clothes, food, dishes or maintain basic hygiene. The current situation already poses a threat to public health and must not be exacerbated by higher fees for basic needs.

Bill 107 fails to require full cost accounting analysis of privatization proposals. These are essential to ensure that the full range of short- and long-term consequences of privatization for the community and the environment are quantified and publicly discussed before final decisions are made.

The lack of research into consequences is yet another blow to democracy which requires fully informed representatives and voters. As always, the poor stand to lose the most when democracy fails, and in this case will be in greater danger of losing their very lives.

In other countries where water has been privatized, there have been severe shortages and households unable

to pay increased costs have been disconnected. As a direct result of these factors, there have also been dramatic increases in the incidences of dysentery, hepatitis and other gastrointestinal diseases. There have even been outbreaks of disease due to reduced water quality on the United States side of the Great Lakes basin, just in case you think it can't happen here.

In Britain, water had to be trucked in by a massive fleet of trucks in Yorkshire region. Rationing and penalties for misuse had to be introduced and pollution problems further reduced access. It is interesting to note that at the same time as the system was collapsing, the CEOs of the same water utility corporation which caused the problems were reaping salaries at least three times higher than the former public system managers. Poor people in that region had to fill buckets from waste-polluted rivers and sneak jugs of water out of public washrooms. This frightening example of the consequences of privatization is one more reason why access must be a right.

If privatization is not going to be expressly prohibited, Bill 107 must ensure there is an independent regulator of water and sewage services in Ontario. Even Britain tried to retain this responsibility, though it has so far proved toothless as an enforcement mechanism.

In the United States, there has been pressure by the private sector to undermine clean water act standards to expedite higher dividends and less responsibility for industry. We do not even have a Clean Water Act. So the process of degrading water quality would be even easier here.

In countries where campaigns to sacrifice standards for the sake of profit have been successful, people have to rely on bottled water to maintain health. This is not a viable option for poor families.

One argument frequently used for privatization is that municipalities are too poor and inefficient to maintain the systems properly and that the private sector will do a better job. Yet proof is largely to the contrary. In Britain, maintenance has been very poor, resulting in approximately 29% of water supply being lost in leakage. People who live in municipalities which lack the capacity should have the same rights as other Ontario residents. That is why the province used to share responsibility, assist in infrastructure improvement and provide quality control services to ensure quality of access.

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Left to sink or swim on their own, poor communities will be unable to pay enough to maintain plants properly as well as covering increased overhead costs. Some 25% of Ontario's water and sewage infrastructure is half a century old or more and will not last much longer. Under Bill 107, any hope that new state-of-the-art plants will be built in poor communities would be a wishful fantasy.

If the province truly could not contribute to the costs of upgrading local systems, municipalities can borrow money from international funds and banks usually at a lower rate of interest than multinational corporations can. Furthermore, they do not have to factor dividends to shareholders and the higher cost of private sector management into the terms of their borrowing.

Once you dump the protection and control of our most precious resource, you cannot change your mind. The North American free trade agreement imposes dire penalties for having second thoughts or trying to correct your course of action if selling public assets to the private sector somehow backfires.

Even if we could surmount obstacles to reclaiming sovereignty over our water, the expertise and infrastructure dismantled by privatization would have to be rebuilt from the ground up, once again punishing the taxpayer. NAFTA also hands the right to access our water over to the United States just as they have hit the wall of shortages due to waste and pollution. They maintain this right whether or not we experience shortages in Canada.

Once our water services and infrastructure are privatized, what's to stop the multinationals from making deals with their subsidiaries and each other? The substantial foreign interests waiting in the wings have no stake in our water quality other than profit. But then again, if one has a choice between no water or bad and costly water, what do you do? You pay.

Why should they invest in quality control if there's no penalty for inadequate or unsafe delivery? Why would they encourage conservation for future generations when reducing use would reduce their profit? Who then protects Ontario residents' basic right to an inherent natural resource? Who will hold the wealthy controllers of the global economy accountable for our local interests? As we increase their profit, our wealth will drain out of our economy and our land along with our water.

Also strange is how the burden of interest payments is crushing our economy in the average household, but somehow companies that purchase the water treatment plants and sewage treatment plants we have paid for will only be asked to pay face value. How can you allow the taxpayers' investment in regulating, treating and conserving our water to be not only betrayed but sold out at a loss? Before Bill 107, any surplus revenues were reinvested in water services, ensuring that taxpayers' money continues to serve the purpose we expect. Now increased surpluses will end up in someone's pocket, while shortage creates thirst and disease for poor people. As it has been elsewhere, so it will be here.

It is clear whose interests are being served here and whose have been swept aside by the forces of greed. It is more than an oversight to put forward a bill so profoundly opposed to the public interest in the name of reducing government. Dismantling government's role of safeguarding life's most fundamental and fragile resource is hardly the average person's idea of better government; neither have I found this item in the common sense agenda. So you can't say we voted for it.

The lack of any public accountability to health or environmental standards and legislation in Bill 107 is an omission which openly threatens the future sustainability of Ontario's population and ecology for the sake of a quick buck.

Any gains to be made by this and virtually all other forms of privatization accrue to the wealthy by sucking the rest of society into ever-increasing hardship. Taxpayers paying higher user fees as consumers end up essentially paying twice for service infrastructure and the

province uses the one-shot revenue to help finance tax cuts as corporations make more profits.

It is a pattern too likely to be repeated again and again until our society is completely at the mercy of monopoly control, which is even worse than the random impacts of the free market. The monopolistic forces which are poised to consume privatized utilities, crown corporations and public services are heretical to the principles of traditional capitalism.

In France, three companies control 80% of water business and the French auditor general has expressed concern about lack of competition in the water business. How then does your government rationalize its plans with capitalist rhetoric while further advancing the conditions for global corporate hegemony in which a free market and fair competition are virtually impossible?

The rights to water cannot be sold for a short-term and illusory gain on the deficit tax cut balance sheet. The loss to the public would be immediately unrecoverable. No proof exists that privatizing water improves services or reduces costs, but all evidence suggests it is complete disaster for poor people.

To add insult to injury, the multinational utilities industry has a track record of corruption and incompetence. Almost every jurisdiction which has taken a closer look at full cost accounting and the history of the top-bidding companies has rejected the temptation to give up responsibility for water.

How is it common sense to hand over stewardship of one fifth of the world's fresh water supplies to unscrupulous profiteers who have reduced access and quality of water in other jurisdictions?

I'm a widow with four children. I cannot afford another financial burden, although I work hard for my minimal salary. Many of the people I work for and with could pay more for water. Many have already been pulled under by loss of wages or income. Nobody's children can thrive without secured access to clean water. Most of the population cannot consistently afford bottled drinking water, which may soon be the only way to guarantee the safety of water.

With OCWA in place and infrastructure improvements and upgrades in process, we can continue to sustain an improved water supply for ourselves and future generations. People who are enabled by public education to ensure responsibility for water quality and, if necessary, can be constrained by law from poisoning those who live downstream — especially the captains of industry — can be assured that their extra attention and effort will continue to be rewarded by continued access and health.

Municipalities can facilitate and maintain local services, but can rarely afford to retrofit or upgrade water and sewage treatment plants, nor can they be guaranteed to prioritize the interests of those living downstream.

Your government's apparent willingness to deny access to a life-giving resource, thus risking death simply to increase profit, implies a terrifying denial of the basic principles of governance —

The Chair: Excuse me. Are you just wrapping up?

Ms Grey: Yes, I am — a breach of democratic process and an absence of moral context and the exercise of leadership. Excuse my boldness, but Bill 107 is a direct threat to my family.

Will artificial scarcity of an abundant resource be created by depriving the most vulnerable so the majority will tremble with fear and pay up quietly? The sustainability of clean water is a responsibility that all must share and therefore must be protected by remaining publicly accountable. We must have an enforceable clean water act if we wish to have access to fresh water in the future.

In the interest of all life in Ontario, I pray that your basic duty to all your constituents will compel this committee to insist that accountability for the right of everyone to access clean water now and in the future remain the responsibility of the provincial government and the people of Ontario.

The Chair: Thank you very much for coming today. We appreciate hearing your point of view.

Ms Grey: Why am I surprised you don't have any questions?

PAULA VOPNI

The Chair: We'll now ask Paula Vopni to come forward, please. Each presenter has 15 minutes. You may choose to use your time as a complete presentation or with questions from the caucus.

Ms Paula Vopni: I hope that it will only take about 10 minutes and then I would like to ask questions actually, or have questions answered that I'm going to pose.

First of all, I'd like to thank the committee for giving me this opportunity to express my views about Bill 107. I will proceed by explaining my understanding of various aspects of Bill 107 and of other acts and developments that directly relate to Bill 107 and by expressing my reactions, opinions and questions about such acts and developments as I proceed. I've chosen this approach because of the complex nature of the bill and its implications and because information about the bill and related developments, as well as public debate about them, seems to be quite limited.

First, I understand that Bill 107 will transfer ownership of sewage and water works from the Ontario Clean Water Agency to municipalities. As I understand it, OCWA is a crown corporation that operates the Ministry of Environment and Energy's water and sewage facilities and provides financial and technical assistance to municipalities. I further understand that OCWA operates and financially supports these facilities in the interest of human health, to promote water conservation, to ensure public accountability and to support provincial policies regarding land use and development. It is my understanding that OCWA was intended to contribute to economic renewal, to ensure environmental accountability, to promote water conservation, to encourage sustainable development, to create jobs, to improve water service and efficiency, to foster new financing and investing arrangement and to pursue opportunities for more effective partnerships.

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Also, I would like to note that the Ontario government's municipal assistance program, which provided capital grants for municipal water and sewage projects, was virtually eliminated from the budget of the Ministry

of Environment and Energy in early 1996. Since municipal governments are losing provincial grants and are at the same time undergoing massive restructuring, it seems likely that municipal governments will have trouble financing their water services.

In a related development, following the introduction of Bill 107, a provincial task force identified OCWA as a candidate under review for privatization.

Finally, I would also like to make reference to Bill 26, the Savings and Restructuring Act, enacted in early 1996, which makes it easier for municipalities to dissolve water or public utilities without electoral assent.

In light of these seemingly discrete but related developments, it seems to me that if Bill 107 is enacted, OCWA will become an agency which simply pursues contracts to operate water and sewage facilities owned by municipalities and its public interest role will disappear. In fact, I feel it is possible, even likely, that OCWA will be privatized. Since OCWA owns 25% of the province's 937 water and sewage facilities, this means that these facilities are potentially threatened by privatization under Bill 107.

The stated objectives of Bill 107's OCWA reforms are disentanglement of municipal and provincial roles regarding the delivery of sewer and water services and encouragement of public ownership of water and sewage infrastructure.

This is confusing, because as far as I am aware, water and sewage services are currently publicly owned. Does public ownership in the context of the government's stated objectives mean private ownership? This is a question I would like to put to the committee or the current government. Are we, by debating Bill 107, discussing and considering the sale of our water facilities? I was stunned and appalled when I fully realized the nature of the various bills and developments which have been going on with relation to water services. I've seen very little in the press about this and I am wondering why an issue as vital as water services seems to have escaped the notice of the mainstream press.

In light of these developments and acts and in the absence of public debate and information, I can only conclude that Bill 107 is intended to substantially reduce the province's traditional role with respect to water and sewage services and to promote the privatization of all water and sewage services in Ontario. If the government of Ontario wishes to privatize municipal water service, I believe it should have the courage to do so through an open and transparent process rather than in a surreptitious and arcane manner that will force municipal governments to privatize these services and suffer public outrage. Any attempt to sell off water service facilities should be openly debated and subject to the most rigorous scrutiny and review and, most important, to public assent.

Privatization of water services in other parts of the world has led to rising water rates and deteriorating water infrastructure, because the mandate of private companies is to make profit, not to provide quality water. Private companies have no mandate or interest to conserve water. On the contrary, they would have an interest in using and selling as much water as possible. In addition, private companies would have no mandate to protect health, so

they would have little interest in ensuring the quality and safety of water. Thus, privatization of water services is contrary to the public interest in Ontario and to the environmental protection of the Great Lakes.

Furthermore, the stated objectives of Bill 107 do not include any objectives relating to environmental protection, resource conservation or improvement of water quality in terms of ecological criteria. Nor do the stated objectives of the sewage system amendments make any reference to environmental protection, resource conservation, improvement in water quality or water treatment based on an ecological approach. However, the bill is called the Water and Sewage Services Improvement Act. I fail to see how this act will improve water services, and I come before you not only to express my misgivings but to ask for an explanation of how this bill will improve water services for the people of Ontario.

I fear that rather than improving service, rather than ensuring that citizens of Ontario will have access to clean water, rather than ensuring a more ecologically sound system for waste water treatment and for drinking water treatment, this bill is intended to offload responsibility for these services to save money in order to reduce the deficit and thus enable the government to cut taxes.

Privatization opens the door to the wholesale export of water from Lake Ontario to the US under the terms of the North America free trade agreement. Once water is sold in bulk, it will be classified as a commodity and subject to the terms of NAFTA which apply to commodities. I understand that this means we would have to treat US customers on the same terms as we treat domestic customers, that we could not restrict sale of water even in times of national shortages.

Privatization of water services is particularly troubling for the city of Toronto. It seems to me that privatization of water services in Toronto could very well lead to foreign ownership of water facilities which we have paid for out of tax revenues. But beyond this, once a private company owns water facilities in Toronto, it seems to me that they will be able to sell water from Lake Ontario to private buyers, including US interests who would like to purchase water from the Great Lakes for sale to customers in the US Midwest.

I'm familiar with a scheme called the great canal or the grand canal which has been devised to divert water from the Great Lakes to the US Midwest. The private and/or government parties interested in such a scheme would surely welcome the opportunity to purchase access to water from Lake Ontario.

Because of the fundamental human need for clean water, it is independent from market forces. People need clean water in spite of market forces and will be required to pay any amount for water and will need to have clean water at any price or risk becoming ill. These needs are not subject to the market. How will citizens of Ontario pressure private companies to provide clean, safe water? Who will the competition be? How will rates be set? Where will profits go? These questions deserve debate in an open forum.

Privatizing water services is anathema to the public interest and to environmental protection and resource conservation. Privatization of water resources in the name

of cost-cutting is not justified. Losing public control of water resources would be the greatest folly any government could consider. Only a free market ideologue would advocate the privatization of water resources. Water resources should not be subject to market forces.

I must diverge here to posit that there is no such thing as a free market or market forces operating in Ontario, because the government continues to subsidize primary resource extraction and processing industries in Ontario and to subsidize roadbuilding. These subsidies at the front end of the economic system distort the market and make any claims about a free market and the operation of market forces absolutely preposterous. How can we as taxpayers be required to subsidize the private sector so heavily and then not subsidize and pay for our own water services?

In conclusion, I assert that water services should remain under public ownership, meaning public administration, government, tax-funded. The government of Ontario must ensure, through law, that transferring ownership to municipalities will not result in their privatization, meaning being sold off to private enterprises. Any such attempts must be open to public review and subject to public assent. We must maintain the public right to clean drinking water, the right to have clear standards restricting contaminant levels in drinking water, and we must protect our technical and financial capacity for testing, monitoring and reporting about the state of our drinking water supplies. We must not lose public control of our water resources.

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Before I finish, I want to make it quite clear that I'm not part of any special interest group, unless the entire population of Ontario can be regarded as a special interest group. In fact, I would argue that the people of Ontario do indeed have a special interest in water quality and that the members of this committee and their children and the members of the Ontario government and their children also have a special interest in water quality. I argue that we all have a special interest in water quality.

I expect, in good faith, that I will receive answers to the questions I have posed today and that my views will be taken into account by the government when discussion of Bill 107 proceeds in the Legislature.

Applause.

The Chair: I remind the audience that this is an extension of the Legislature and the gallery must not participate in the proceedings other than by listening.

There is a little less than two minutes remaining. We'll begin with the NDP caucus for brief questions and replies.

Ms Churley: We're willing to give up our time for the government to answer a question.

The Chair: Agreed? Okay. You can direct questions to the parliamentary assistant, Dr Galt.

Ms Vopni: First of all, I want to know, are the things I mentioned at the beginning, all these related or unrelated acts and developments by government, intended to privatize water services and facilities in Ontario?

Mr Galt: You're referring to other bills or you want to discuss this bill?

Ms Vopni: This bill, but I believe there are other bills and developments which directly relate to this bill. You can't really look at this bill in isolation without looking at those.

Mr Galt: Looking very specifically at this bill, the whole purpose of this bill is to clarify who should own the plants. Right now, 75% of the waterworks, plants for treatment for both water and waste water, are owned by municipalities and 25% are owned by OCWA. We're proposing in this bill that 100% of the plants should be municipally owned and that's what the transfer is about. From there on, the municipalities will then have the flexibility to look at who operates them, whether it be themselves or OCWA or a private company that would actually do the operations of those plants.

But it's our intent that the ownership stay in the municipality; in other words, publicly owned. Municipally, it's closer to the public, closer to the people who are using it. We believe the local municipal councils are the ones that are closer to you and in more of a democratic process, that's the place for the ownership.

Ms Vopni: That being the case, then, since municipalities are undergoing a lot of cutbacks in grants and restructuring, what is to prevent them from selling off those utilities if they can't afford to maintain them?

Mr Galt: They'll have to return the grants or subsidies that the provincial government has given to them. In some cases, up to 85% of the building of the plants has been paid for by the provincial government. That's quite a disincentive for them to be selling them off to private interests. Also, there's \$5.4 billion annually that they can now collect from residential property which was previously going into education, which the province will now be taking over.

Ms Vopni: So there's nothing in law to prevent them from selling them?

Mr Galt: There never has been in the past.

The Chair: I have to interrupt at this point. I'm sorry, but that is all the time we have for questions. Thank you very much for coming today to make a presentation.

NATIONAL SURVIVAL INSTITUTE

The Vice-Chair (Mrs Barbara Fisher): I call Fiona Nelson, representing the National Survival Institute. Good afternoon.

Mrs Fiona Nelson: Thank you very much, Madam Chair, ladies and gentlemen. I've put myself down to speak as the president of the National Survival Institute, which is a national NGO particularly interested in the environment. I have been president of that for several years. In addition to that, I'm also a member of the Toronto Board of Education and the Toronto board of health. I mention that simply because of the obvious connections between water and sewage treatment and the general health and wellbeing of the population. In a sense, I suppose I would be particularly speaking to Dr Galt, as a former veterinarian and therefore a person concerned about public health. My son is a farmer in his constituency and so I'm particularly anxious for him to hear this message.

I think it's useful to keep in mind not only this particular bill but the context in which it's being pres-

ented, which is an amazingly tumultuous time of a great flurry of bills in all directions, especially radically changing the role of municipalities and the things that they're going to administer and the things they're going to pay for. It concerns me that this particular bill probably addresses itself mostly to the municipalities with the poorest revenue bases, which is of particular worry to me because, as you've heard from several other deputants, of the potential that arises for the privatization of the water and sewage treatment in those municipalities and the rather extraordinarily bad history that private water and sewage has had in other parts of the world.

I think it's important to keep in mind a quotation from Mahatma Gandhi who said, "Think of the poorest, weakest man you have ever seen and ask yourself if what you are about to do is going to be of any use to him." Inasmuch as we're probably talking about the poorest municipalities in this province, perhaps the ones with the fewest financial resources, but maybe they're sitting on most of the water resources, I think it's a particularly important thing to consider exactly who it is we're talking about. I also think it's important to remember that in the omnibus bill the need to have a referendum around the privatization of these resources, as I understand, was removed and therefore it could be done very quickly and arbitrarily by a particular council which found itself in difficulty.

I'd like for a moment to direct you to the matter of health, which is of great concern to me. A few years ago I sat on a panel with the Honourable Jean Charest at the International Joint Commission talking about the health of the Great Lakes. That is of course a matter of great concern to us. It's a huge chunk of the world's fresh water, much of it in not a terribly drinkable state. Ontario contains an enormous fraction of the world's fresh water sprinkled all over the landscape and it's very easy to take it for granted. This worries me because once we've despoiled the fresh water, either the surface water or particularly the aquifers, we're in really serious trouble as far as health is concerned, not only of the people but of the animals and the crops in this province. It seems to me that this can be done so easily. We know that there can be unfortunate and unexpected spills of various awful chemicals from mine sites and the manure vats on a pig farm and various other things that maybe nobody has anticipated and they are simply catastrophes. But to deliberately put ourselves in the way of what could be an environmental catastrophe of great dimensions strikes me as an extremely dangerous and foolhardy thing to do.

Just about the earliest thing that public health authorities did in this province was to look at water and sewage, because they were well aware of the fact that an enormous amount of infectious disease was spread by water that was supposed to be drinkable water but was contaminated by sewage, and we know that the link between the two is pretty inexorable. It strikes me as an extremely backward step to be dismantling a very strong publicly funded and supervised and regulated body and putting into the hands of the municipalities least able to cope with it the responsibility for looking after clean water and the disposal of sewage in an appropriate manner.

It strikes me that water also has to be considered, like air and soil, as a public good and it should not ever become a private good. There is just too much connected to it that has to do with the welfare of the entire population that makes it an extremely dangerous move. It would seem to me that we must think of it always as something that should stay in the public hands, be controlled publicly, be regulated very strictly publicly and be available with no profit motive in mind. It is unfortunate that profit often causes real distortions of people's sense of duty and responsibility.

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As a sidebar to this, the current dispute over the bovine somatotropin, the hormone to produce more milk in cows, is producing a tremendous furore simply because people have an innate and almost instinctive need to feel that the milk that is available to them must be clean, must be uncontaminated and must be free of any kind of foreign substances. Water I think is held in the same regard as milk by most people. It is something that people have to depend upon as clean and healthy and available and not something that they cannot afford.

The Toronto board of health a few years ago did a very interesting study on the water produced by the city in its water treatment plant as opposed to the bottled waters that were available. It was a very comprehensive study and it showed that the publicly produced water from the Toronto waterworks was as good or better than most of the bottled waters, some of which were bacterially contaminated. I think that's a useful thing to keep in mind, that the people of Toronto were able to depend on the publicly produced water as a safe way to get their drinking water and water for other purposes.

I don't think you can dismiss people's innate concern about this. It is a good that people have to be able to depend upon and that they should not have to be held up to ransom for. For that reason, I would really like to remind you that not only should we think about what we're doing on a rational basis, but we should worry about the rational people who by their intellect put the tools of destruction into the hands of the irrational. I'm inclined to think that people who are motivated primarily by profit are going to have what would amount to an irrational sense of their responsibility when it comes to something like water.

Finally, I'd like to plead with you to reconsider what is happening here and its potentially catastrophic impact and withdraw this bill. If you wish to reintroduce it, reintroduce it at a time when the public at large has the energy and the ability to pay attention to it. At the moment, with the enormous number of tremendously comprehensive bills that are being put through the House, I think that there are far too few people aware of what the potential of this bill is. Even if the new city of Toronto that you're creating hangs on to its public waterworks and continues to produce clean, safe water for the people of Toronto, the water in the rest of the province could — in the little municipalities that are going to be in financial straits because of the various downloads that are occurring could manage by giving over this extremely important public good to the private sector — imperil very large numbers of people in this

province, not just for a short period of time but maybe in perpetuity. We all know that once you contaminate a major aquifer, it takes hundreds, even longer numbers of years for it to clean itself again. I hope that you will keep in mind the particular health interests we have to consider in this bill, the people to whom you are going to be giving this responsibility and their ability to cope with it and the welfare of the entire province.

I'm speaking to you certainly as an environmentalist, certainly as a teacher, certainly as someone concerned about public health but most particularly I'm appealing to you as a grandmother. This is the sort of thing that is going to have very long fingers and I do not wish to hand over to my grandchildren a province that is so badly contaminated that their health is going to be at risk. I plead with you to reconsider this matter and to withdraw this bill to a time when the people of this province can give it due consideration.

I've left about five minutes. I hope there's time for some questions.

The Vice-Chair: You've actually left about three minutes. Having said that, our questions start this time with Ms Churley from the third party. That's the way it was indicated to me.

Ms Churley: I'll be quick. Earlier today, Mr Galt, the parliamentary assistant, quite rightly in fact pointed out to a deputant that the previous NDP government had not brought in any new clean water regulations. I wish we had. Of course, we're now trying to convince this government to do so. But for the record I've been reminding people of all of the things that this government has done to harm water quality: repealing laws, deregulating.

There's one I forgot to mention earlier, Madam Chair, and you might be interested in this, and that is the proposal for the expansion of protection for agricultural activities from the requirements under the EPA, the OWRA, the Planning Act, the public health act, and this is all through the Farm Practices Protection Act. So talk about runoff and problems there. The MOEE groundwater and hydrology staff have been cut by 53%. I forgot to mention those earlier, so I just wanted it on the record that those are other areas yet again. I shall be mentioning more as we go along about the deregulation and cuts that are actually hurting our water quality as we speak.

Mrs Nelson: I was aware of those, partly as an environmentalist, and as I say, partly as the mother of a farmer. I am extremely concerned about all those things, which was why I was aiming my shots partly at Dr Galt.

Mr Galt: Thank you for your presentation and making reference to my riding. I did want to bring to your attention, as you made reference to a referendum as it relates to PUCs, that's right, that was in Bill 26. But PUCs actually operate very few waterworks in the province; some water treatment plants, but very few waste water treatment plants, so that the opportunity for municipalities — it's 75% that presently own them — to privatize has been there I suppose almost since the beginning of time. With this bill, we are putting in there the disincentive for privatization by requiring that the grants or subsidies would have to be returned to the province. It's certainly our wish, our desire, that the

municipalities, the level of government closest to the people, will maintain and operate the plants. It's good for that community and they know what's best for them. What this bill is about is moving the 25%, or 230, of those plants to the respective municipalities that they operate in, the municipalities that are presently paying for them anyway. We believe that they should have the ownership, the same as the other 75%.

Mrs Nelson: I think it's the fable about the camel's nose that comes to mind. You may remember the Arab who on a cold night put up his tent and the camel was outside and begged to just put his nose inside and a little later, could he put his head inside and then his neck —

Mr Galt: I thought that was an elephant.

Mrs Nelson: The story I heard was a camel. But eventually the whole camel got into the tent and the Arab was pushed out. You're quite right, it's just the PUCs. That to me is the camel's nose. I would be a lot easier about this if there was an express forbidding of this particular aspect of our environment being privatized in that bill, but I may be pushing my luck with that one, I don't know.

Mr Hoy: Thank you very much for being here. I knew of your concern for the environment from sitting in an audience many years ago in Chatham where you were speaking on environmental concerns, and your concern is no less so for water and water quality.

We don't have much time. Actually, I did want to read this to another presenter two or three persons ago, the Low Income Families Together. I carry this in my wallet. You gave a quote —

Mrs Nelson: From Gandhi.

Mr Hoy: — in midstream of your presentation, so I'll give you one which is not dissimilar but by someone else: "The test of our progress is not whether we add more to the abundance of those who have much. It is whether we provide enough for those who have too little." I wish I could say it was a Canadian who coined the phrase but it was Franklin Roosevelt in 1937.

Mrs Nelson: Let's hope that we can meet that objective, which is what I think we all would benefit from.

The Vice-Chair: Thank you very much, Mrs Nelson, for attending. We've appreciated your comments this afternoon.

1620

The Vice-Chair: I wonder if Ms Casselman is here.

GEO-LOGIC INC

The Vice-Chair: I would ask then if Nyle McIlveen is here. Good afternoon.

Mr Nyle McIlveen: Good afternoon. Thank you very much for the opportunity to address the committee. I apologize off the bat for any lack of preparation. I found out about this on Friday, by mistake or whatever, and I didn't have a lot of time to get stuff together. But I have a few major concerns.

I'm a professional engineer. I represent a small consulting firm, Geo-Logic Inc. We carry out the part VIII program in North Bay, Parry Sound and Gravenhurst. We actually run the nuts and bolts of this program, so this presentation is more, I would hope, from a nuts-and-bolts perspective.

Basically, we handle the day-to-day operations of installing tile beds. My own doing of this is, I handle most of the large tile bed design approvals, I deal with complaints and complaint investigations and tile bed failures. I feel I've got a pretty good understanding of how it works and I'd like to bring some of that to this committee.

I feel the program has been stagnant for 25 years. I don't think anything has been done to it, so when people are talking about presenting and improving the program, I honestly don't feel there's a possibility to fix it from within. I may not be popular with some of the presenters, but I think at this stage this may be the best option. However, I have some concerns with the way Bill 107 was generated.

Number one, the date, October 1, has already been dealt with. That was quite a grave concern from our point of view. I'd like to just indicate the reasons I think it is a really poor date. I would stress that I think it should be January 1, and I think you should stick to that date and not deviate from it, because at the stage in October the inspectors, installers, everyone who is in the business is going great guns. They are trying to get their job done. They don't have time to start up a program. This is not going to be an easy task, what you're asking. However, if they have time to do it in January, February, March, when the snow is on the ground and there are not complaints coming in, there is a possibility that this can be done. So I would suggest that you don't let it go any further than January 1. October 1 was a poor date. That was my first.

The second point I have is that the program appears to have been divided up into a two-tier system, county and municipality, and then there's a third tier put in there with the government. I really, truly believe it should be a one-tier system. I was asked how this could be done. I'm not quite sure at this stage. However, one group should be responsible for it: large tile beds, small tile beds, complaint investigation. It's the only way you can efficiently run the program. If you've got two or three people involved, there's always someone else who can do something. You can go to someone else and say, "This is a problem." You should keep it at one tier. Whether it's county government, district government, that should be selected, but I think if you get it out and it's two tiers or three tiers, you're going to have problems.

The approach that's been taken by a lot of engineers and the level of knowledge in this province with regard to septic systems is often embarrassing, and a lot of this has come about, in my opinion, because the government has taken control and allowed engineers off the hook. I'm a professional engineer and I review professional engineers' work now, and a lot of it is disgraceful. What we have to do is put it back into their hands, but make them responsible. When they have something that isn't a proper submission, we send it back. I don't even look at it. I think that's one thing, that somehow the government is going to have to increase the level of experience of installers, engineers, anyone involved in the program.

My third point is a small one. I didn't understand why a large tile bed was selected at 4,500 litres. I think I have the answer: I think it was selected as 4,500 litres because

it has always been 4,500 litres. I think that kind of attitude of just saying, "Well, that's the way it was," is wrong. I can't give you a number right now. My incentive would be somewhere around 10,000. I think it should be upped, because when you're dealing with a system between 4,500 and 10,000, it's a small corner store. It's someone who doesn't have the money to put in a huge system; however, they need a system. So I think some care should go into selecting that number. I don't think we should just accept 4,500 and say, "Okay, that's the way it was before."

Another point was that the ministry was going to set tough rules for installation and inspection and expect the municipality to just go by them. I think there should be a lot more input from the municipality. We've been on the contract for the new manual that's coming out for training and certification. I think the municipality should be made more responsible for that. I think somehow there should be a separate body set out that is responsible for all this work. It's not the government. The government has the experience and the expertise, which they've always had, at approvals. That's their role. The role of municipalities is to carry out the function, and then you have a body in between that is responsible for policing and certification of installers. I am frankly sick and tired of installers who get 70 or 80 tickets for doing something wrong and their licence isn't pulled. You've got to put some teeth in the policing of this regulation somehow when it comes down to it. If you have a separate body, someone who's at arm's length from both groups, that's another body where the public can go.

This bill is going to evolve. This is not going to be a one-time thing. This is a big change. I would say this is changing 40 years of the way things have been done, so it's going to evolve. So you have to have that separate body where people can go.

I guess that comes into the last part of it. I think the municipalities should be involved more in the training aspect. If we have this separate body, it can be given a grant or some kind of monetary payment to carry out the training they wish on how to do it. They will be given the guides and the utensils to do it and where to do it, but I think it should be taken out of the government's hands as much as possible.

In closing, I think you made the right choice in the part VIII program, because I don't think it could be fixed, but I think you have to build in a lot of flexibility. The one thing that disturbed me was that all these meetings are in Toronto for part VIII. I'm from Peterborough and I deal in North Bay, and I'm tired of people in Toronto saying how septic systems should be put in and installed, because they don't see them, and they're making the regulations. I think those three or four points should be added to the bill and some consideration should go into it. Are there any questions?

The Vice-Chair: Thank you very much. I would like to welcome the minister to our proceedings today. We did have the occasion to have you at our series yesterday as well, so welcome to our proceedings. As a matter of fact, we start with the government this time.

Hon Norman W. Sterling (Minister of Environment and Energy): I happen to be a civil engineer as well, and

a long, long time ago was involved in a number of engineering skills etc. May I say about the installers that the whole purpose of Bill 107 is to introduce a degree of professionalism in terms of the installers and the inspection, to try to get some kind of even keel across the province in terms of inspections and in terms of installers.

I am not unmindful of your suggestion with regard to having some kind of intermediary body taking care of getting rid of the bad installers. The problem is, the installers are not organized at the present time in any kind of association. This is brand-new for them. Therefore, I think your suggestion may have more relevance a year or two down the road. What is going to naturally happen, because they are not licensed at the present time or certified, is they will become more active as a group and therefore will be in a more mature position to perhaps come up with another association spinning out of that, or not an association, but if you want to say an accreditation body involved in the certification and all the rest of it.

Secondly, we have retained an engineering firm to come up with a certification program, both in terms of the inspection and in terms of the installers. Therefore, we are addressing this head-on. I have given personal instructions to my staff to ensure that municipalities, and small municipalities in particular, where these kinds of systems are put in are consulted. We're trying to locate as many of the installers as we can. Unfortunately, because they don't have a central focus, it's difficult to have them give input, because they're not organized in any fashion, but we hope to be able to get as much back as we can during this period of time.

I think it's a tremendous step forward. As you say, this program has really been very disorganized over the last 40 years, and this is the first attempt by a government to put any kind of organization behind it to make it more professional. I think, notwithstanding inspectors, the improvement in the systems will be dramatic because of the training and because of the fact that if you're a bad installer, your right to do those installations will no longer be there.

1630

Mr McIlveen: One thing I would say to that is, don't shortchange the installers. They're a group that's been trying to —

Hon Mr Sterling: Oh, I'm not shortchanging them.

Mr McIlveen: — get together for quite a while.

Hon Mr Sterling: And I'm giving them the tools to do it.

Mr McIlveen: Yes, and you must do that. As a group, they're more than willing. It's better for them if they're a licensed group. They're licensed now, but the licence carries no weight. That's the major problem. But I wouldn't shortchange them. I think they'll pick up quickly if you give them the tools and if you give them another body where they can go and learn.

I always get the excuse from a lot of people, "Well, some of them can't read and write." That may be one or two people, but we can't change the system for that. If we have to have a way to deal with those one or two people — they still have to fill out forms, so I wouldn't shortchange them at all.

Hon Mr Sterling: I wasn't shortchanging them at all. I was just saying that I'm giving them an opportunity here which they've heretofore not had.

Ms Churley: I very much appreciate your coming down from Peterborough to give us some of your technical expertise. It was interesting to hear one engineer talk to another about some of those technicalities. I'm interested to hear that the minister is saying that he understands the problem around training. I have to tell you that I am extremely nervous about the municipalities' willingness or ability to accept these responsibilities. Groundwater and surface water contamination by septic systems is well documented, and you would know that as well. In my view, it requires further regulations. It's one of the issues I was concerned about when we were in government, and still am, because I don't think people understand the magnitude of how serious it can be. So I think it's nice that you're here to talk about some of these real nuts-and-bolts issues.

Madam Chair, oh dear, I forgot and I must say again, there are a couple of other areas here where I've discovered that this government and the Ministry of Environment are actually doing things, repealing laws that are actually at this moment hurting the water supply and the environment, and I just want to read them into the record. One of them which I'm very concerned about of course is the restriction of the conservation authority mandates to flood control through Bill 26, and the withdrawal of provincial funding for conservation authorities. That, as we all know, is really going to hurt our water supply.

One that I'm very, very concerned about, and I expect the public will be if they know that this is happening, is that there are plans to repeal the marinas regulation — that's regulation 351 — and replace it with a voluntary code of practice. Right now, 351 requires marinas to have pump-out facilities to dispose of the sewage from their pleasure boats. I also remember this being an issue when we were in government, the grey water area issue; really serious problems with contamination on that.

I just wanted to say that it's important, as we discuss all of these issues, that we must look at the full magnitude and fit the context of this bill into all of the deregulation that is happening throughout the entire ministry around environmental protection, including the protection of our vital water supplies.

Mr McIlveen: One thing I'd like to say to try to alleviate some of your concerns in regard to municipalities is, I heartily believe municipalities can do it. I privately do it now, so it's taking business away from me. I don't think it is. I think it will all work out in the wash. However, health units and a lot of these municipalities have done this for years. They do a better job. They're getting better at it all the time. In our area it's going to be a big change. Our area is going to be one of the hardest-hit because these municipalities haven't done it since 1974 or 1975, and those are the areas.

The other area is, I honestly don't believe the system is going to change that much, other than for the better if we can get the certification, and that's crucial to this whole bill. If they can do it, that will improve the system greatly. But I really believe municipalities can handle it from that end. It's not a huge argument. I'm going to try

to assist them in our area so there's a nice, smooth transition to the municipalities.

The Chair: Thank you very much for coming today.

EARTH SAVE

The Chair: I do not see Ms Casselman yet, so I would ask if Miriam Hawkins is here. Good afternoon and welcome to our proceedings.

Ms Miriam Hawkins: Thank you very much. I'm here to represent Earth Save, which has a mandate to protect public interest in terms of our agricultural practices and farm lands and so on, but I think the extension to water quality as a whole is a fair one.

One of the biggest concerns I have with this bill is that it does not specifically refer to the transfer of services only. It actually refers to water itself as a finite commodity, and I think that's one of the most glaring problems with the bill. This has been brought up by a previous speaker. Under NAFTA, of course, we lose control of our water as a commodity.

I think the wording of this bill should be looked at because it doesn't talk about the transfer of services; it talks about the transfer of water, which is ownership. If we don't recognize that we have one fifth of the world's fresh water supply and that we will give up ownership of it without public input, without a public referendum — this is unacceptable. We're losing all control.

I think we would all agree that one of the most fundamental rights we have as citizens is to water, fresh water, and that if we give up ownership of the water, we no longer have anything as citizens. If we don't own the water, what do we own? If we can't get a fresh drink of water, what can we get? If we can't say that this lake belongs to the province and the public, what's the point of being born in the province? Our fresh water is one of our richest resources and we would give up ownership of it completely. This bill does not protect us from this.

Another thing I'd like to mention, and perhaps this is the second most serious concern I have about the process of this bill's introduction and debate, is that this is not a televised hearing. There are no televised hearings. How is the public going to see the other side of the issue? The government has made the bill public, but none of these issues are discussed publicly because there's no television coverage of them.

Certainly this committee is not planning to do a lot of travelling, and the number of hearing dates is so limited that really the opportunity for the public to take part in a discussion or consultation about this is nil. I would say this is not an open process at all. If the government wanted to let people know what these various organizations have to say and what the two sides of the issues are, then this should have been held in another committee room where television would be possible. I question the lack of television coverage.

Certainly the curtailment of public involvement is on various levels. Of course this bill and Bill 26 certainly mitigate against any kind of public involvement, public-initiated referenda. We're basically hamstringing as citizens. I say this is a basic human right, the safety of our drinking water, the availability and ownership of our

drinking water. It's one of the only things that we have as citizens where we can say, "Yes, this is ours and will remain ours."

As far as the stated purpose is concerned, it's easy to see we have come across a lot of problems financially in the province, and these stem back to reductions in transfer payments from the federal government and transfer cuts to municipalities for these water and sewage treatments and their services. If ownership is going to go to private sector for profit, why would the province not maintain the ability to take the profit itself? If there's going to be profit made from it and if there's private sector interest, therefore profit interest, why would the government of Ontario not want to maintain the ability to profit from the water and sewage treatment if in fact there's a long-term advantage from a profit standpoint?

1640

If we're having trouble paying the bills, if we're cutting back hundreds of millions of dollars to these services, why don't we maintain the possibility of making a profit as a province so we can pay for them in the long run?

The other thing I might bring up is that the subsidy to these private sector interests would certainly not include, and it certainly doesn't include, the price the public has paid over the years to the federal government in terms of taxes. Money that was paid to the federal government by taxpayers is not being included as a requirement for the payment of any private sector interest.

May I ask why the public should pay for years and years, why ratepayers would pay for years and years to pay back the federal government and to pay for these services, why we would just give all that up to the first private sector bidder that some cash-strapped, desperate municipality is going to bring on as a private sector joint venture or co-ownership or operational management contracts and these kinds of things?

If there's money to be made, let it stay in the public purse. If the public has already paid for it in any regard, whether it's federal or otherwise, this should be repaid if any private sector interest — and I don't agree that the private sector has an ownership role here at all, because of the NAFTA concern.

I think many people have brought up the question of what incentive there is in the bill for private sector companies to maintain water quality standards. Certainly there's no accountability. The public can at least complain to the government and certainly we can change the government. We can't change a private sector company. We can't vote them out. We're not shareholders. Not everybody can be a shareholder.

Everybody is a shareholder in Ontario, in the government of Ontario. We're all voters, except the children, whom nobody seems to think about in any of this. What kinds of decisions are we making for our children who cannot become shareholders and who don't vote? Are we protecting their interests in the long run or will they be paying higher and higher prices with no regulatory scheme in place and no accountability? I say it's completely irresponsible.

These may be the most important points. So many points have been brought up, and quite frankly I don't

see any of the environmental sector's points that I don't agree with. Perhaps I can stop here and have some response to some of these issues I've brought up and we can discuss that.

Ms Churley: Thank you for your presentation. You have stated what many others have today, although there are some different perspectives in certain areas. First of all a very simple question: Is your preference that this bill be withdrawn and that there be more public consultation and discussion before anything is done and changes made here?

Ms Hawkins: Absolutely. I think this is a fundamental human right, the right to our water resources and to clean water. I think the public is very interested in this. I don't think the public has been given any opportunity to take part in the discussion. Two days of hearings in Toronto represent a complete abrogation of the government's responsibility in this issue.

Ms Churley: Right. Okay. It's unlikely — it's possible, anything's possible, but it's unlikely that the government will withdraw the bill. What do you think would be the most important amendment to make this bill at all agreeable to you?

Ms Hawkins: I would say the most important amendment would be to make sure that any reference to the transfer of water and sewage services include the word "services" so that we're clear we're not handing over the water. It doesn't say in every instance "services."

Ms Churley: In other words, when Mr Galt and others say, "We want to discourage privatization and we're doing that by saying that —" well, the discouragement is that they've got to pay back any grants, which of course is just the cost of doing business. It's a ridiculous, bogus argument but they say that. If they really mean what they're saying, then why don't they just write into the bill that municipalities cannot privatize water? That would solve that problem, if they put their money where their mouth is.

Ms Hawkins: It's clear that it's not the intention and I think there's quite a little bit of obfuscation on this issue. I don't think the government's intention is to protect public safety. I don't think the government's intention is to create a regulatory framework or any kind of public involvement. It's very clear that if the government were interested in any of these issues, these would be stated in the bill. I think this facilitates privatization all the way and that's what it's about: the transfer of water, not water treatments and water services. I think that is what it's all about.

Mr Galt: Thank you for the presentation. Just a few comments to try and clarify some of your concerns. The first is you make reference to the transfer, and in section 56.1, section 56.2, under subsections 56.2(2), (3), (4) and (5), all very specifically refer to the transfer of waterworks or sewage works. They do not refer to ownership of water or the transfer of water in any way, shape or form, and that's true throughout the bill.

The concern you expressed about the coverage and the public knowing about this: That was an all-party agreement. We agreed we would go for five days of hearings out of Toronto. It was London, Ottawa and Thunder Bay,

and we did not receive enough submissions, concerns from delegations in Ottawa and Thunder Bay to warrant the cost of sending this committee. We've invited them to send their submissions to us in writing, and we look forward to obtaining those. There was all-party agreement. It wasn't just a government decision to do it in that form and in that style.

You referred to the private sector concerns and the direction with that particular area and moving in that direction. I assure you this is about ownership and who should have the ownership, and we believe that the municipalities should have the ownership. To discourage municipalities from privatizing or going in that direction we're asking, not only asking — it's in the bill — requiring them to return the grants or any subsidies they've received from the provincial government.

Ms Hawkins: It's a fraction of the cost of these facilities.

Mr Galt: Well, in some cases that fraction is 85% and that's a pretty high fraction, in my estimation.

Ms Hawkins: And with hundreds of millions of dollars in reductions —

Mr Galt: The other area of concern you expressed is about children. Let me assure you this government is very concerned about children, the kind of debt that's been laid on this province over the last decade or so, just really putting our children under an extreme, heavy debt burden in the future. I'd suggest to you this is probably the most compassionate government this province has seen in many, many years.

Ms Hawkins: If I could just respond to your comments about the financing of these facilities: Why wouldn't the province be in a very strong position to create new methods of financing for these facilities? I think municipalities are less able to raise the finances necessary. The provincial government can issue bonds. There are other forms of capital financing that could be explored by the province and certainly none of these — I mean, we have some problems in terms of our fiscal situation here in Ontario, but we certainly should come up with more creative solutions. To suggest that municipalities are being discouraged from privatization when their transfers are being cut by hundreds of millions of

dollars, I don't understand how that can possibly be, and if it's the intention of the government, let it be stated.

The Vice-Chair: I thank you for your presentation this afternoon. That ends our proceedings.

I acknowledge a point of privilege.

Ms Churley: Madam Chair, I request a point of privilege, and it's not entering into debate: I think it's important to clarify how decisions are made around travelling and where and when committees meet. Subcommittees: Each party has a representation and it is true that there is general agreement, although the government has priority.

The Vice-Chair: Excuse me, Ms Churley, I just have to say that you asked for a point of privilege, and it's not a point of privilege that you're raising.

Ms Churley: Okay. My point of privilege is this: Our party wanted to go to other locations, but because of the emphasis on Bill 103 and the lack of publication and public understanding of this bill, there was a lack of response from the public. But it's this government's fault for not letting people know what has been going on with this bill. It is not this party's fault that we've only been in three locations, and I want to make it perfectly clear for the record —

The Vice-Chair: Excuse, Ms Churley, you said that you wanted to make a point of clarification. The clarification has been made.

Ms Churley: — that I will not take that ridiculous rap from the parliamentary assistant to the Minister of Environment.

Mr John R. Baird (Nepean): On a point of order, Madam Chair: I'd also mention that the government has a minority representation. The opposition outnumbers the government two to one on the subcommittee.

The Vice-Chair: That's not a point of order.

Ms Churley: Are you trying to say our party has tried to limit public hearings on this bill? That is absolutely ridiculous.

The Vice-Chair: Ms Churley, excuse me. You're out of order. Having had our presentations for today, I would like to draw these hearings to a close, to recommence tomorrow morning at 10 o'clock. Thank you very much.

The committee adjourned at 1651.



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Substitutions present / Membres remplaçants présents:
Mr Floyd Laughren (Nickel Belt ND)

Also taking part / Autres participants et participantes:
Hon Norman W. Sterling (Carleton PC)

Clerk Pro Tem / Greffière par intérim: Ms Donna Bryce

Staff / Personnel: Mr Lewis Yeager, research officer, Legislative Research Service

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